

### Advisory Board

## Our Mission

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Wendy Keever-Ring  
Wendy Keever-Ring, Director  
Carnivore Protection Program

**IN RE: PETITION FOR SUSPENSION AND  
CANCELLATION OF M-44 SODIUM CYANIDE CAPSULES &  
SODIUM FLUOROACETATE LIVESTOCK PROTECTION COLLARS**

) DOCKET NO.

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**1. INTRODUCTION:**

Sinapu, Public Employees for Environmental Responsibility (PEER), Beyond Pesticides, Forest Guardians, Predator Defense, Western Wildlife Conservancy, Sierra Club, The Rewilding Institute, Animal Defense League of Arizona, and Animal Welfare Institute hereby petition the Administrator of the Environmental Protection Agency (EPA) to issue a Notice of Intent to Cancel the registration of M-44 sodium cyanide capsules (hereinafter M-44s) and sodium fluoroacetate (commonly known as "Compound 1080" or known as sodium monofluoroacetate), a toxicant only allowed in "livestock protection collars" (LPCs) pursuant to Section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. § 136d). Further, we request that the Administrator suspend the registration of M-44s and LPCs under FIFRA 7 U.S.C. § 136d(c)(1).

Cancellation and suspension is warranted because these pesticides, when used in accordance with widespread and commonly recognized practice (FIFRA, 7 U.S.C. § 136a(c)(5)(5)), generally cause unreasonable adverse effects on the environment and pose an "imminent hazard" as defined by FIFRA (7 U.S.C. § 136(1)). Because continued use during the time required for cancellation proceedings would likely result in unreasonable adverse effects on the environment and involve unreasonable hazards to species listed as threatened or endangered under the Endangered Species Act (ESA), we request that these pesticides be cancelled and suspended at the earliest possible date.

The U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services (APHIS-WS) and others' continued usage of sodium cyanide and Compound 1080 as part of their "predator damage management" programs have resulted in unintended deaths of numerous species and domestic pets. Furthermore, these toxicants continue to place people at risk. For example, according to recently reported incidents, it appears that APHIS-WS failed to follow FIFRA use guidelines for M-44s. As a result, two dogs were poisoned in Utah in Spring 2006 within close proximity of humans. Moreover, APHIS-WS has jeopardized threatened and endangered species and species of special concern, such as wolves and swift foxes, with sodium cyanide as documented herein. Surveys indicate that between 11 and 71% of animals killed to prevent conflicts with humans or livestock were not involved in negative interactions and those data, if extrapolated to APHIS-WS, indicate that the agency overkilled 1.5 to 9.7 million animals "without cause" between 1996 and 2001 (Treves and Karanth 2003).

Most of the species that APHIS-WS killed were killed with various poisons. Nevertheless, of the 101,225 mammalian carnivores killed in 2004, 11,872 were killed with M-44s, and 45 were killed with Compound 1080 [Table 1, attached]. The total killed by M-44s and Compound 1080 was 12% and 0.04%, respectively. Thus, the

benefits of using these toxicants to livestock producers are low, while the risks and costs to people and wildlife (including endangered wildlife) are high. The risks far exceed the derived benefits.

Furthermore, because sodium cyanide and Compound 1080 could be used as bioterrorism agents, and because APHIS failed two federal audits in 2005 and 2006 concerning their handling of and accountability for lethal toxicants, the EPA should ban the manufacture and distribution of sodium cyanide as used for predator control and completely ban the manufacture and distribution of Compound 1080 at the earliest possible moment.

## **2. THE PARTIES:**

**Sinapu**, a Colorado non-profit corporation, maintains its principal place of business in Boulder, Colorado. Sinapu is dedicated to the restoration and protection of native carnivores and their wild habitat in the Southern Rockies, and connected high plains and deserts. Sinapu's 1,000 members include outdoor recreationists, wildlife watchers, wildlife photographers, biologists, and hunters. Sinapu's staff and members have a wide range of interests in wildlife, from the aesthetic and ecological to the utilitarian. Sinapu's staff and members derive scientific, recreational, educational, and aesthetic benefits from wild carnivore populations including coyotes, wolves, pumas, bears, bobcats, foxes, skunks, badgers, as well as other wildlife.

**Public Employees for Environmental Responsibility (PEER)** is a nonprofit organization headquartered in Washington, D.C. It is a national alliance of local state and federal resource professionals. PEER works nation-wide with government scientists, land managers, environmental law enforcement agents, field specialists and other resource professionals committed to responsible management of Americas public resources. The work of PEER members involved with public lands and wildlife conservation is frustrated by the use of the predator control pesticides addressed in this petition.

**Beyond Pesticides** (formerly, National Coalition Against the Misuse of Pesticides) works with allies in protecting public health and the environment to lead the transition to a world free of toxic pesticides. Beyond Pesticides, located in Washington DC, has successfully been working toward this goal with grassroots organization from around the nation for 25 years.

**Forest Guardians** is a non-profit public interest organization dedicated to preserving the wildlands and wildlife of the American Southwest. Forest Guardians has a long history of interest and involvement in public lands administration, and is particularly concerned with the harm caused to large predators from grazing, logging, oil and gas extraction, and other consumptive use interests. The staff and 1,800 members of Forest Guardians use and enjoy public lands, waters, and natural resources for recreational, scientific, spiritual, educational, aesthetic, and other purposes. Forest Guardians and its members also participate in information gathering and dissemination, as well as education and public

outreach. Forest Guardians has been, and continues to be, a leading voice for promoting environmental interests in New Mexico, Arizona, Colorado, and Utah.

**Predator Defense** is a non-profit 501(c)3 organization based in Eugene, Oregon. Predator Defense, founded in 1990, is an active voice and political watch dog for predator species through out the United States. Predator Defense networks with other organizations to support conservation-related field research and efforts to preserve and enhance critical wildlife habitat. Predator Defense legally assists those who have suffered losses of companion animals to poisons and traps set by the USDA-Wildlife Services' program.

**Prairie Preservation Alliance (PPA)** is a Colorado-based conservation organization with members worldwide. Its mission is to restore and preserve the shortgrass prairie and associated native wildlife across its historical range. PPA's vision is to acquire habitat for the conservation of native prairie species. PPA is concerned about the affects of poisons on native species.

**Western Wildlife Conservancy** is a member-based non-profit organization located in Salt Lake City, Utah. The mission of Western Wildlife Conservancy is to protect and enhance native wildlife populations and their habitats in the Intermountain West through research, education and advocacy.

**The Sierra Club** is a broad-based, grassroots environmental conservation organization based in San Francisco, CA, with approximately 700,000 members in the United States and Canada, and 20,000 members in the State of Colorado (the Rocky Mountain Chapter). The goals of the Sierra Club are to: 1) Explore, enjoy and protect the wild places of the earth, 2) Practice and promote the responsible use of the earth's ecosystems and resources, 3) Educate and enlist humanity to protect and restore the quality of the natural and human environment, and 4) Use all lawful means to carry out these objectives. The "earth's ecosystems and resources" and "wild places" includes wildlife species and their habitats.

**The Rewilding Institute** is a non-profit, conservation think tank dedicated to science-informed protection and restoration of biological diversity at landscape and continental scales in North America. A primary focus of TRI is the restoration and conservation of ecologically effective populations of top predators.

**The Animal Defense League of Arizona** is an Arizona non-profit corporation dedicated to protecting and defending Arizona's animals. ADLA has worked to encourage the development of policies to protect mountain lions in our state, as part of its program for protection of wildlife and wildlife habitat, especially focal species such as large carnivores. Its members live throughout and outside Arizona. Many members enjoy outdoor recreation such as hiking, backpacking and many forms of wildlife watching. ADLA members derive recreational, educational, and aesthetic benefits from wild carnivore populations, as well as other wildlife.



**The Animal Welfare Institute** is a non-profit charitable organization founded in 1951 to reduce the sum total of pain and fear inflicted on animals. It is headquartered in Washington, DC and has over 25,000 members worldwide.

### **3. FACTUAL BACKGROUND & EVIDENCE OF HARM:**

#### **A. HISTORICAL SUMMARY—WHY THE USDA-APHIS-WS USES LETHAL TOXICANTS:**

For centuries, the western dominant culture presumed that predators were evil and ravenous (Mighetto 1991). From the moment white settlers appeared in the New World, they began to exploit predator populations (e.g. Coleman 2004, Robinson 2005). Even the humanitarians of the late nineteenth century, who extended Christian notions of mercy and kindness to animals, distinguished between “good” and “bad” animals (Mighetto 1991). The New Humanitarians believed that (evil) predators preyed upon “innocent victims” such as deer or rabbits (Mighetto 1991). Under this context, predator and animal control became a widespread practice and institutionalized in a federal government agency starting in 1905. Congress too became involved in wildlife killing when it passed the Animal Damage Control (ADC) Act in 1931, which states:

The Secretary [of the Department of Agriculture] is authorized to conduct investigations, experiments, and tests to determine the best methods of eradication, suppression, or bringing under control mountain lions, wolves, coyotes, bobcats, prairie dogs, gophers, ground squirrels, jack rabbits, brown tree snakes, and other animals injurious to agriculture, horticulture, forestry, animal husbandry, wild game animals, fur-bearing animals and birds. Another purpose of these investigations is to protect stock and other domestic animals through the suppression of rabies and tularemia in predatory or other wild animals. The Secretary is also directed to conduct campaigns for the destruction or control of these animals. In carrying out the Act, the Secretary may cooperate with states, individuals, agencies and organizations.

(7 U.S.C. § 426, as amended in 1987 and 1991).

As a result of the Animal Damage Control Act, massive trapping and poisoning campaigns occurred which resulted in the extirpation of numerous species including wolves, grizzly bears, kit and swift foxes, and jaguars. In response, the American Society of Mammalogists, in 1931, called the Predatory Animals and Rodent Control (PARC) agency, “the most destructive organized agency that has ever menaced so many species of our native fauna (Edge).” Seven decades later, the American Society of Mammalogists again condemned APHIS-WS’s practices and called for fundamental reform (American Society of Mammalogists 1999, 2000).

As the Animal Damage Control Act demonstrates, before about 1940, the dominant western society failed to understand that predators play a critical ecological roles in

maintaining both biological diversity and ecosystem function (e.g. Leopold 1949, Crooks and Soule 1999, Logan and Sweanor 2001, Smith et al. 2003). Native herbivores, especially ungulates, had been wiped out by unchecked hunting regimes (Warren 1997), leaving predators with little else to eat. Native carnivores had little choice but to survive domestic livestock. This put carnivores into conflict with white settlers. Most were more concerned about utilitarian values; that is, protecting sheep or cattle, which made people money, but not protecting coyotes or wolves which exacted a toll on livestock operations.

By the 1950s and 1960s, both the scientific community and the public began to change their attitudes toward predators (Leopold 1949). This shift may have been in large part due to Farley Mowat's (now discredited) book, *Never Cry Wolf*, which was published in 1963 but became a Disney blockbuster in 1983. In it, Mowat depicted wolves as compassionate and social animals and dispelled the myth for a portion of the public that they were ravenous wanton killers (Dunlap 1988, Mighetto 1991). As a result of these tensions, people have and do demonstrate a complexity of perceptions about wildlife values (Kellert 1996, Kellert and Smith 2000, Teel et al. 2002). The new ideology concerning predators as a result of early scientific studies manifested into two attempts in the 1960s and 1970s to reform the agency that is now known as USDA-APHIS-WS.

As chair of an Interior-appointed commission, A. Starker Leopold (Aldo Leopold's son) issued the "Leopold Report" in 1964 to Stewart Udall, Secretary of the Interior, before a national wildlife conference (Dunlap 1988). The report described widespread abuses by PARC and emphasized the indiscriminate wildlife killing through the use of traps and poisons, particularly Compound 1080. According to the Leopold Report, the American populace especially seemed to favor native carnivores. The Report stated, "large carnivores in particular are objects of fascination to most Americans and for every person whose sheep may be molested by a coyote there are perhaps a thousand others who would thrill to hear a coyote chorus in the night" (Leopold et al. 1964).

Leopold's report indicated that PARC's operations were not based on science, but rather were responsive to the desires of the agricultural community, which was interested in more wildlife removals. The commission chaired by Leopold advocated a massive overhaul of PARC to ensure that the excessive wildlife killing by the agency would be curtailed. In addition, Congress recognized that PARC's operations were injurious to imperiled species. Subsequent to the Leopold Report, a Congressional hearing led to several reforms, including a restriction on the use of some toxicants, extensive training for agency personnel, the establishment of an outside advisory panel, and a name change. PARC became the *Division of Wildlife Services* within the U.S. Bureau of Sports Fisheries and Wildlife (Leopold et al. 1964, Dunlap 1988, USDA-APHIS-ADC 1994).

In 1971, a second report, the "Cain Report," was issued to the U.S. Department of Interior and Council on Environmental Quality, this time from a panel chaired by Stanley A. Cain (Cain et al. 1971). The Cain Report lamented that, some seven years after the Leopold Report, the Division of Wildlife Services continued to ignore the sentiments of the majority of the American population, who supported wildlife protection. In addition, the Cain Report found that wildlife research "showed again and again that predator

control was of very limited benefit in increasing populations of game species.” The writers called for radical change with regards to wildlife management:

Guidelines and good intentions will no longer suffice. The federal-state predator control program must be effectively changed. It must take full account of the whole spectrum of public interests and values, not only in predators but in all wildlife. This will require substantial, even drastic, changes in control personnel and control methods, supported by new legislation, administrative changes, and methods of financing (Cain et al. 1971).

The Division of Wildlife Services title lasted until 1973, when it reverted back to *Animal Damage Control*—a moniker it held for twenty-four years. In 1986, APHIS-WS was returned to the Department of Agriculture. In 1997, Animal Damage Control took back the name *Wildlife Services* in its attempt to foster a sense of professionalism with the public and to disguise its unpopular mission.

In past decades, this federal agency has also been interested in containing predator populations to benefit wild prey. In recent years, WS has promised state agencies, that if it kills predators, it can elevate prey species’ numbers.

Yet, many peer-reviewed studies have shown that large native carnivores help stabilize ecosystem functions and increase the abundance of species (Crooks and Soule 1999, Henke and Bryant 1999, Smith et al. 2003, Ripple and Beschta 2006). Killing predators does not always lead to an increase in prey populations—unless prey species are *below* their carrying capacity (National Research Council 1997, Ballard et al. 2001, Logan and Sweaner 2001). If prey species such as ungulates are above their carrying capacity, removing predators will exacerbate starvation among the ungulates, not improve their lot (*e.g.*, Leopold, 1949). Wild carnivores kill and eat wild prey (*e.g.*, Husseman et al. 2003). But do wild prey species’ populations decline because of it? We offer three examples relevant to the petition at hand. WS kills coyotes in order to benefit desert pronghorn, mule deer, and sage grouse:

First, a study on Sonoran pronghorn found that drought, not predation, is the primary cause for the decline of this endangered species (Bright and Hervert 2005). In their “Pronghorn Management Guide,” Raymond Lee et al. (1998), write, “if suitable habitat is not available for a prey species, no amount of predator control will bring about flourishing populations of that prey species.” For pronghorns, fawn survival is directly attributable to abundance of “nutritious grasses and forbs during late gestation and early lactation” (Lee et al. 1998).

Second, the Colorado Division of Wildlife concluded that the mule deer herds on the Uncompahgre Plateau in southwestern Colorado suffered from “poor quality winter range conditions” and disease, which contributed “to subsequent poor survival of fetal and neonatal fawns.” High mule deer mortality *was not* linked to excessive predation by native carnivores (Watkins et al. 2002, Pojar and Bowden 2004).

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Third, Dr. Clait Braun, retired Colorado Division of Wildlife grouse expert, stated in his affidavit, "No one has yet demonstrated that spring recruitment and breeding population size of sage-grouse have been or can be affected by predator control programs."<sup>1</sup> The loss of habitat from fires, grazing, weed invasion, and other factors is largely responsible for declining sage grouse populations. Grazing is known to degrade sage grouse habitat by eliminating grassy understory, destroying riparian and wet meadow areas, causing weed invasion. If there is not sufficient food for hens, the egg quality will be reduced. Moreover, weather—i.e. lack of precipitation can affect egg quality as well (id.).

A new study confirms Dr. Braun's statement. Mezquida et al. (2006) found that coyotes indirectly benefit sage grouse populations because: 1) coyotes control the number of mesopredators (red foxes, badgers, and ravens) who are more likely to prey on sage-grouse eggs and their young, 2) a decrease in coyotes may result in the increase of jackrabbits, which has two results: a) jackrabbits compete directly with sage grouse for sagebrush and forbs (for both food and cover); and b) increase in jackrabbits may lead to an increase in golden eagle populations, "the most important predator of adult sage grouse" (Mezquida et al. 2006).

Despite this empirically discovered knowledge, WS promises that its predator-killing program will benefit prey, but that misplaced belief presumes that predators dominate the relationships between themselves and their prey. If predators simply killed all of their prey, there would be neither. Myriad influences can determine the size of prey populations including habitat quality and quantity, disease, anthropogenic threats, and stochastic events.

In sum, white settlers to the New World determined that predators were evil and ravenous. This ideology became codified in federal agency actions by 1905 when the precursor to Wildlife Services was established. Congress, in 1931, passed the Animal Damage Control Act which further institutionalized wide-spread predator-killing programs. Biologists such as Aldo Leopold and others began conducting empirical studies and discovered that predators were necessary ecosystem actors. Others began to try to change PARC, and despite the high profiles of both the Leopold and Cain committees and their respective reports, fundamental reforms in the federal animal damage control program have never occurred. Rather, Wildlife Services continues to operate under the Animal Damage Control Act of 1931, and is still funded through partnerships with state and local governments and private parties such as the Cattlemen's and the Woolgrowers' Association. APHIS-WS continues to indiscriminately kill carnivores at alarming rates. In 2004, for example, Wildlife Services spent \$101,490,740 to kill 2.7 million animals (USDA-APHIS-WS 2005b, c) [Table 1, attached].<sup>2</sup> Yet,

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<sup>1</sup> Declaration of Dr. Clait Braun in Committee for Idaho's High Desert et al. vs. Mark Collinge et al. (April 2002).

<sup>2</sup> Wildlife Services was supposed to release their FY05 kill numbers and budget by June 2006. As of this writing, the numbers have still not been released despite repeated inquiry by Sinapu.

predators, on their own, do not determine prey species numbers because of a host of environmental and anthropogenic factors, and as we discuss in detail below, few predators actually kill domestic livestock.

#### **B. THE IMPORTANCE OF CARNIVORES IN ECOSYSTEMS:**

Along with a change of societal values, the science concerning carnivores has vastly improved over the last several decades. Large carnivores can modulate prey populations and make them more vigorous (*e.g.*, Murie 1940, Leopold 1949, Logan and Sweanor 2001). Carnivores contribute to ecosystem health and functionality—their effects cascade through all the trophic layers as these examples provide:

1. Wolves indirectly brought free-flowing water above ground in Yellowstone and thus created habitat for more species. After the wolf reintroduction into the Park in 1995, elk, which had decimated willow and aspen stands, were forced to be more mobile to avoid predation. With less elk herbivory, willow communities returned, beavers followed and used trees and shrubs to build their dams and lodges. Those structures not only brought water from underground to the surface, but made water flow more dependable. As a result, neotropical and water-wading birds and moose populations increased (Smith et al. 2003).
2. A new study indicates that the presence of pumas in desert ecosystems can have the same top-down effects resulting in increased biological diversity and functionality of rare riparian systems (Ripple and Beschta 2006).
3. Coyotes regulate mesopredators (that is, medium-sized carnivores such as skunks, raccoons, and house cats) and thus more ground-nesting birds survive (Crooks and Soule 1999) and rodent species' diversity is more robust (Henke and Bryant 1999).

In short, carnivores increase both the richness and complexity of animal life and indirectly contribute to better ecosystem function. Despite this important free work, what biologists call “ecosystem services,” the federal government and others spend literally hundreds of millions of dollars annually in attempts to eradicate or scale back predator populations. Not only can this imperil native species and destabilize ecosystems, it has resulted in unintended consequences with generalists such as coyotes, which have increased their range several fold as discussed below.

Yet, in many western states, black bears, mountain lions, and bobcats have few protections despite their low fecundity and recruitment. While not considered sensitive, their survival may be imperiled by multiple threats, including habitat loss and persecution—particularly through indiscriminate means such as lethal poisons like sodium cyanide and Compound 1080. Other species, including grizzly bears, lynx, kit foxes, swift foxes, and wolves, are less malleable in the face of persecution and loss of

habitat. Consequently, even now, they face the threat of extirpation or extinction and thus unintended deaths from misplaced poisons could jeopardize their populations.

### **C. THE "SLEDGE HAMMER" APPROACH TO WILDLIFE MANAGEMENT:**

APHIS-WS has done little to benefit ecosystem health, and instead contributes indirectly to habitat dysfunction because it kills so many species, especially top-level carnivores for ill-conceived livestock protection regimes, but also to increase prey species (e.g., deer, pronghorn, and elk). The numbers of predators killed to protect livestock is highly disproportionate—perhaps on order of 1.5 to 9.7 million animals were killed for the benefit of agricultural interests "without cause" (that is, indiscriminate killing) by federal agents during the period 1996 to 2001 (Treves and Karanth 2003).

Several conservation biologists have called high levels of predator killing the "sledgehammer" approach to wildlife management (Logan and Sweanor 2001, Mitchell et al. 2004, Stolzenburg 2006). Lethal controls, including poisons, are not selective for specific animals, but rather are used to remove the most individuals from an area (Mitchell et al. 2004).

For coyotes, traps, snares, and poison baits often attract younger animals, not the older or dominant individuals that are usually implicated in livestock depredations (Logan and Sweanor 2001, Mitchell et al. 2004, Stolzenburg 2006). In the past handful of years, several biologists have expressed their skepticism about the current course and efficacy of lethal predator controls that involve millions of dollars and tens of millions of animals (Treves and Karanth 2003, Mitchell et al. 2004, Berger 2006, Stolzenburg 2006).

APHIS-WS's approach to predator control is blanket, indiscriminate, and wasteful. With lethal methods, the agency does not pretend to capture the "single offending animal." Moreover, the General Accounting Office Report (1995) demonstrates that the use of non-lethal methods of predator control by APHIS-WS's is virtually nonexistent.

Is lethal pest control with sodium cyanide or Compound 1080 necessary to control predators? Is it necessary to kill predators in order to control them? (Questions paraphrased from Littin and Mellor 2005). The humaneness of predator control by sodium cyanide and Compound 1080 is certainly controversial (Marks et al. 2004, Littin and Mellor 2005, Hooke et al. 2006), and as we demonstrate here, their usage is neither economically nor biologically feasible when weighed against the danger these toxicants pose to the public and to nontarget species of all stripes.

Therefore, we request that the EPA carefully review this petition and find that these two pesticides are not essential in the practice of lethal predator control, and that the environmental risks and costs, as outlined in this petition, far outweigh the benefits. Furthermore, we request that the manufacture and sale of these toxicants used for this purpose be banned. The benefits will be to people, to wildlife, and to ecosystems.

**4. EPA'S DUTIES UNDER THE  
FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT:**

The EPA is responsible for the oversight of pesticide sales and use in the United States. Specifically, FIFRA charges the EPA with reviewing and registering chemicals for use as insecticides, fungicides, rodenticides, and pesticides (collectively "pesticides") in the United States. 7 U.S.C. §§ 136-136y. A pesticide generally may not be sold or used in the United States unless the EPA has registered it for that particular use.

The EPA may register a pesticide only after making the following determinations: (1) the labeling complies with FIFRA's requirements; (2) the composition claims are warranted; (3) the pesticide will perform its intended function, and (4) the pesticide will not cause unreasonable adverse effects on the environment. The culmination of the registration process is the EPA's approval of a label for the particular pesticide, which then may not be used in a manner inconsistent with that label. 7 U.S.C. §§136 et seq.

The EPA must classify pesticides for general or restricted use, depending on their particular risks. Where necessary to guard against unreasonable adverse environmental effects, the EPA must classify (or when the information becomes available, reclassify) a pesticide as "restricted." Restricted use pesticides may only be applied by a certified applicator or under the direct supervision of a certified applicator and application must follow all limitations on the frequency, type, location or protective measures associated with its use. 7 U.S.C. §§136 et seq.

Even after registering a pesticide, the agency retains discretionary involvement and control over that registration, and furthermore, it must review each registration every fifteen years. The EPA also has the authority to compel registrants to submit data on potentially unreasonable adverse effects that may be necessary for a re-registration review and can cancel pesticide registrations whenever "a pesticide or its labeling or other material required to be submitted does not comply with the provisions of this Act or, when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment." (7 U.S.C. § 136d(b)).

The EPA's re-registration decisions require a determination of whether the pesticide causes unreasonable adverse effects to people or the environment when used according to product labeling. This determination is presented in a Re-registration Eligibility Decision (RED) document. The environmental assessment evaluates the likelihood that exposure to that pesticide may cause harmful ecological effects. The effects can be direct (*e.g.*, fish die from direct exposure due to a pesticide entering the waterway) or indirect (*e.g.*, birds become sick or do not reproduce normally after ingesting contaminated fish). The studies conducted during the environmental assessment include: defining the chemical properties of the pesticide; determining how the pesticide behaves in the environment; and assessing its impact on plants and animals not targeted by the pesticide.

The types of measures included in REDs to reduce risks that are of concern include: voluntary cancellation of pesticide products or deletion of uses; declaring certain uses ineligible or not yet eligible (and then proceeding with follow-up action to cancel the uses or require additional supporting data); restricting use of products to certified applicators; limiting the amount or frequency of use; improving use directions and precautions; adding more protective clothing and equipment requirements; requiring special packaging or engineering controls; requiring no-treatment buffer zones; employing ground water, surface water, or other environmental and ecological safeguards; and other measures (EPA 1994).

When Congress established a special statutory review procedure for administrative actions, courts found that procedure could generally be treated as the exclusive means of review. *See Sebben v. Brock*, 815 F.2d 475, 478 (8th Cir.1987), *rev'd on other grounds sub nom. Pittston Coal Group v. Sebben*, 488 U.S. 105, 109 S.Ct. 414, 102 L.Ed.2d 408 (1988); *City of Rochester v. Bond*, 603 F.2d 927, 931 (D.C.Cir.1979); *cf. Nagel v. Thomas*, 666 F.Supp. 1002, 1010 (W.D.Mich.1987). Because FIFRA has a comprehensive scheme for judicial review, the general federal question statute cannot be relied on as jurisdictional base for a FIFRA challenge. We believe Congress intended that FIFRA provide the exclusive means of canceling a registration. *See Merrell v. Thomas*, 807 F.2d 776, 782 n. 3 (9th Cir.1986), *cert. denied*, 484 U.S. 848, 108 S.Ct. 145, 98 L.Ed.2d 101 (1987) (In a suit to force the EPA to comply with the National Environmental Policy Act before registering pesticides, the Ninth Circuit stated that if Merrell had sued to cancel a pesticide registration, Merrell would have failed to exhaust administrative remedies.)

#### **A. SODIUM CYANIDE:**

In September of 1994, the EPA issued the Sodium Cyanide RED (Case # 3086) and classified sodium cyanide as a restricted use pesticide under FIFRA. Sodium cyanide is registered as a single dose poison used in M-44 ejector devices (discussion below). The 1994 RED found that sodium cyanide is highly toxic to warm-blooded animals and has therefore been placed in Toxicity Category 1, indicating the greatest degree of acute toxicity, for oral, dermal and inhalation effects (EPA 1994). The ecological risk assessment noted that any animal that is able to activate the trigger of the M-44 device will get a dose of sodium cyanide in the mouth and die. The ecological risk assessment acknowledged that M-44 will kill nontarget animals, including some endangered species. Ultimately, EPA found sodium cyanide will not pose unreasonable adverse effects to humans or the environment, and was therefore, registered for use (EPA 1994).

#### **B. SODIUM FLUOROACETATE (COMPOUND 1080):**

In the 1940s, Compound 1080 was used broadly as a pest control agent for rodents and predators. In 1972, EPA cancelled the usage of this agent but was subsequently petitioned by the U.S. Department of the Interior (USDI) and the livestock industry (EPA 1995). Petitioners requested that Compound 1080 be permitted for the limited use in



LPCs that is, bladders that contain the poison which are then strapped onto the head of a goat or sheep.



LPC on a Sheep, Courtesy, USDA-APHIS

In 1985, the EPA granted the petitioners' request and transferred authority to use LPCs to APHIS (EPA 1995). The June 1995 RED (Case # 3073) placed sodium fluoroacetate into Toxicity Category 1, "the highest degree of acute toxicity" (EPA 1995). In mammals, this toxicant can be absorbed through the "gastrointestinal tract, respiratory tract, or open wounds, but only slowly through intact skin" (EPA 1995). The RED also described Compound 1080 as "highly toxic" to a number of bird species (both grain- and meat-eating birds), to certain rodents, and to native carnivores. It was only "slightly toxic" to rainbow trout (EPA 1995). The RED found that scavengers, including those that are threatened and endangered under the ESA could be affected by Compound 1080 if those animals fed on the head or neck area of dead livestock that wore LPCs (EPA 1995). The amount of toxic material found in one LPC (0.7 to 2.1 mg/kg) could kill two to six 150-pound people (Connolly and USDA-APHIS-WS1998).

Despite the precautions under FIFRA which limit the usage of sodium cyanide and Compound 1080, people and their pets are routinely exposed and harmed by these toxicants. Moreover, endangered species such as wolves and condors have been killed by APHIS-WS when it has carelessly placed sodium cyanide in the environment (discussion below). As we have pointed out above, APHIS has been careless with controlling lethal toxicants—risking, as the Office of Inspector General reported—a potential bioterrorism threat.

##### **5. THE EPA'S RESPONSIBILITIES UNDER THE ENDANGERED SPECIES ACT:**

As it was finally passed, the Endangered Species Act of 1973 represented the most comprehensive legislation for the preservation of endangered species ever enacted by any nation... The plain intent of Congress in enacting this statute was to halt and reverse the trend toward species extinction, whatever the cost... [T]he legislative history undergirding [ESA] § 7 reveals an explicit congressional decision to require agencies to afford first priority to the declared national policy of saving endangered species... [The ESA] reveals a conscious decision by Congress to give endangered species priority over the 'primary missions' of federal agencies.

(Emphasis added. *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978).)

**A. DUTY TO CONSERVE:**

In keeping with the legislative intent behind the ESA, §7(a)(1) requires that all Federal agencies shall “utilize their authorities in furtherance of the purposes of [the Act] by carrying out programs for the conservation of endangered species and threatened species.” 16 U.S.C. § 1536(a)(1). These requirements are the substantive embodiment of the Act’s declaration: “It is...the policy of Congress that all Federal...agencies shall seek to conserve [listed] species and shall utilize their authorities in furtherance of the purposes of this Act.” *Id.* § 1531(c)(1).

ESA § 2(b) states, in part, that “The purposes of [the Act] are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species...” *Id.* § 1531(b). The term “conserve” is defined in ESA § 3(2), which states that “‘conserve,’ ‘conserving,’ and ‘conservation’ mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.”

Both the legislative history and the language of the Act itself show that ESA § 7(a)(1) is a substantive duty similar to those duties imposed by Sections 7(a)(2) and 9. Indeed, courts have interpreted this mandate as “a specific, rather than a generalized duty to conserve species,” (*Sierra Club v. Glickman*, 156 F.3d 606, 618 (5th Cir.1998); *Defenders of Wildlife v. Secretary, U.S. Dept. of the Interior*, 354 F.Supp.2d 1156 (D.Or. 2005)) and have held that federal agencies “must utilize all [of their] authorities” (*Rio Grande Silvery Minnow v. Keys*, 2002 WL 32813602 (D.N.M. April 19, 2002)) to conserve threatened and endangered species. Courts have held that “the ESA mandates that [all federal agencies, including the EPA] place conservation above any of the agency’s competing interests.” *House v. USFS*, 974 F.Supp. 1022, 1027 (E.D. Ken. 1997) (holding that the USFS was bound by both the ESA and its own Forest Plan to place an endangered bat at the top of its priority list).

The duty to conserve as imposed by Section 7(a)(1) is distinct and separate from agencies duties to consult and avoid substantive jeopardy. See *Defenders of Wildlife v. United States EPA*, 420 F.3d 946 (9th Cir.2005) (concluding that sections 7(a)(1) and 7(a)(2) impose separate and distinct requirements to mandate and authorize all federal agencies to conserve endangered species and their ecosystems). Courts have held that the recovery duty under Section 7(a)(1) is broader than the “no jeopardy” duty of Section 7(a)(2), requiring more attention to the species than would be necessary to merely avoid extinction. *Carson-Truckee Water Conservancy District v. Watt*, 549 F.Supp. 704 (D.Nev.1982), *aff’d sub nom.*, *Carson-Truckee Water Conservancy District v. Clark*, 741 F.2d 257 (9th Cir.1984), *cert. denied sub nomine*, *Nevada v. Hodel*, 470 U.S. 1083 (1985). “[The Secretary] must do far more than merely avoid the elimination of protected species. [He or she] must bring these species back from the brink so that they may be removed from the protected class, and [he or she] must use all methods necessary to do so.” *Defenders of Wildlife v. Andrus*, 428 F.Supp. 167 (D.D.C.1977).

Like all federal agencies, the EPA is bound by ESA §7(a)(1). Granted, the EPA's primary mission is not wildlife protection. However, when registered toxicants are being used in a manner that is known to harm threatened and endangered species, the EPA is required to utilize its available resources to combat such harm. In short, it must work to conserve those listed species that are affected and potentially affected by these substances. This means that the EPA must cancel or suspend the registrations of M-44s and LPCs immediately.

**B. DUTY TO CONSULT:**

When a species has been listed as threatened or endangered under the ESA, federal agencies are required to assess their programs and activities and ensure they do not jeopardize survival and recovery of listed animals or plants under Section 7(a)(2):

each federal agency shall, in consultation with and with the assistance of the [Interior] Secretary, insure that any action authorized, funded, or carried out by such agency ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary . . . to be critical.

16 U.S.C. § 1536(a)(2).

The ESA establishes an interagency consultation process to assist federal agencies in complying with this duty under Section 7. Federal agencies must consult with the appropriate expert fish and wildlife agency (the Fish and Wildlife Service (FWS) for terrestrial species and non-oceanic fish species, and the National Marine Fisheries Service for marine species) to determine whether their actions will jeopardize the survival or adversely modify the critical habitat of listed species, and, if so, to identify ways to modify the action to avoid that result.

An agency must initiate consultation under Section 7 whenever it undertakes an action that "may affect" a listed species or critical habitat. Conversely, an agency may be relieved of the obligation to formally consult on its actions only where the action will have "no effect" on listed species or designated critical habitat.<sup>3</sup> Effects determinations are based on the direct, indirect, and cumulative effects of the action when added to the environmental baseline and other interrelated and interdependent actions.

Furthermore, agencies may have to reinstitute consultation if threatened or endangered species are killed. The FWS in its biological opinion wrote:

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<sup>3</sup>The appropriate federal wildlife agency must issue a concurrence with the action agency's "no effect" determination for the consultation process to be concluded.

Since it is so unlikely that take [death] resulting from pesticide use will ever be discovered [upon a threatened or endangered species], if even one dead specimen is discovered whose death is attributable to the legal use of pesticides, then the use of that pesticide must cease in all occupied habitat of the species and consultation on that chemical for that species must be reinitiated (FWS 1993).

-001  
In 1998, an adult male grizzly was found near Helmville, Montana. It had died after it had triggered an M-44 and yet the usage of M-44s continues unabated in Montana (Exhibit 1). As the FWS's biological opinion makes clear, the agencies involved (EPA, APHIS-WS, and the FWS) have a duty to reconsult under §7(a)(2) of the ESA.

The usage of sodium cyanide ejectors (M-44s) is almost ubiquitous in the United States. While Compound 1080 is more restricted, the illegal stockpiling of this chemical has resulted in unintended deaths from illegal poisonings. Because a grizzly bear has recently died from an M-44, it makes sense for the EPA and FWS to reinitiate a consultation if these devices are not banned. Since species listed under the ESA have been harmed (wolves, grizzly bears, and condors), the EPA must consult with FWS, or in the alternative prevent the future manufacture and distribution of these toxicants for the purposes of predator control.

### **C. DUTY TO PROTECT:**

Section 9 of the ESA prohibits the "taking" of listed species. "Take" is defined as "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." 16 U.S.C. § 1532(19). See *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687 (1995). Section 9's "take" prohibition apply to federal agencies.

### **5. THE PUBLIC HEALTH SECURITY & BIOTERRORISM PREPAREDNESS & RESPONSE ACT:**

Hydrogen cyanide has been a chemical warfare agent since World War I (Raza and Jaiswal 1994). Even in low concentrations, one can experience a variety of symptoms including headache, nausea, vomiting, and even respiratory arrest (Raza and Jaiswal 1994). Compound 1080 is colorless, odorless, tasteless, and quite water soluble; some countries have categorized this toxin as a threat to water supplies in the event of chemical warfare (Osweiler 1984). As we established (supra), the EPA considers sodium cyanide and sodium fluoroacetate Category 1 toxins. Lethal doses are very small (see below). Because these toxicants pose potential biological warfare threats, the following accounts and audits should alert the EPA of the potential for imminent hazard:

In the USDA Performance and Accountability Report for FY 2002, the Office of Inspector General (OIG) found that "APHIS could not account for 60 pounds of strychnine-treated bait and over 2,000 capsules containing sodium cyanide." (USDA-

APHIS-WS2002). The following year, APHIS could account for these toxins, but failed to put in place an "adequate chemical inventory and tracking system." (OIG 2004). In her February 2002 statement before Congress, Joyce Fleishman, Acting Inspector General for the USDA reported, "We found that APHIS lacks adequate accountability and control over hazardous pesticides and drugs maintained by some of its State offices for use in wildlife damage control" (Fleischman 2002). In a 2004 OIG report, Assistant Inspector General Robert Young found that:

[APHIS-] WS is unable to fully account for its inventories of hazardous pesticides and controlled drugs and that these inventories are not always stored in a safe and secure manner . . . . Therefore, hazardous material remain vulnerable to undetected theft and unauthorized use, and may pose a threat to human and animal safety" (U.S.D.A 2004).

Some of the hazards involved in these reports include sodium cyanide, but also presumably Compound 1080, although that is not specifically delineated because of security reasons. Nevertheless, Wildlife Services is still not in compliance with national safety standards. In 2005 and again in 2006, the USDA OIG released audits revealing that APHIS was not in compliance with the Bioterrorism Preparedness and Response Act. In the first audit (June 2005), the OIG found that APHIS had not secured "dangerous biological agents and toxins" (OIG 2006a). In the second, the OIG found that APHIS was not complying with regulations concerning the security of toxins, that it had not secured access from unauthorized persons, that individuals using toxicants did not have adequate training, and that inventories had not been maintained to prevent the illegal possession (theft), transfer or sale of these toxicants (OIG 2006b). The OIG selected 10 of 75 sites to visit, and none were in compliance (OIG 2006b). The matter received national media attention (Quaid 2005).

Because APHIS cannot adequately safeguard the storage of sodium cyanide, prevent unauthorized access to these toxicants, or even account for the transfer of these chemicals, the public is at risk of "imminent hazard" as contemplated by FIFRA. Ultimately, Congress gave authority to the EPA to ensure that these pesticides are used in the public's interest as required by FIFRA. As we discuss below, the costs and the benefits of lethal toxicants used for predator control is not worth the price.

#### **7. M-44s, SPRING-LOADED-SODIUM-CYANIDE BAITS, FACTUAL BACKGROUND:**

The U.S. Department of Health and Human Services released their July 2006 Toxicological Profile for Cyanide. It provides the human lethal and non-lethal dose rates along with the symptoms of toxicity. In its 291 pages, the document discusses many facets of sodium cyanide poisoning. The following section describes the process of death in humans from this toxin:

The signs of cyanide toxicity at concentrations leading to death in humans

are well described. Intoxication at  $\geq 2,000$  ppm hydrogen cyanide is characterized by a brief sensation of dryness and burning in the throat due to local irritation, a suffusing warmth, and a hunger for air. Hyperpnea, and sometimes a brief outcry, follows the first breath. In  $<1$  minute, apnea, a few gasps, loss of consciousness, and convulsions occur. Cardiovascular failure may also occur, although the heart may continue to beat for 3–4 minutes after the last breath. Reported signs sometimes include a bitter almond-like odor on the breath and (in light-toned individuals) a rose-colored hue of the skin. The total absorbed dose of hydrogen cyanide in such rapid deaths can be as low as 0.7 mg/kg. Dyspnea has been observed in survivors of inhalation poisoning incidents, and renal dysfunction (anuria followed by polyuria) was observed in one fatal inhalation exposure case. Similar signs of respiratory distress and renal dysfunction (albuminuria) were reported following ingestion of high doses of cyanide salts. Within a few minutes after swallowing the toxicant, the victim collapses, frequently with a scream. Dyspnea, convulsions, and death from asphyxia follow. Dermal exposure to cyanide results in comparable effects, but at higher doses. Based on case report studies, the following acute median lethal exposure levels for humans were estimated: an LC50 of 524 ppm for a 10-minute inhalation exposure to hydrogen cyanide, an LD50 of 1.52 mg/kg for the oral route, and an LD50 of 100 mg/kg for the dermal route, assuming that CN<sup>-</sup> is readily released from the compound. Animal studies also report dyspnea, convulsions, and asphyxiation as effects of high-acute exposure to cyanide by any route of exposure.

Nonlethal exposures to hydrogen cyanide gas produces upper respiratory irritation, cough, altered sense of smell, nasal congestion, epistaxis, hemoptysis, and dyspnea in exposed workers. Workers acutely exposed to cyanogen, which dissociates into hydrogen cyanide and hydrocyanic acid, experienced nasal irritation. Other effects observed at nonlethal exposure levels include hypotension, heart palpitations, precordial pains, nausea and vomiting resulting from central nervous system stimulation or direct contact with cyanide, and albinuria. Animal studies also report bradycardia, arrhythmia, and T-wave abnormalities, vomiting, increased blood urea nitrogen, and histopathology of the renal proximal tubular epithelium and glomeruli. Hepatic effects have not been reported in humans, but have been observed in some animal studies.

(Health and Human Services, 2006).

While death from sodium cyanide toxicity is relatively quick, the description above clearly demonstrates the severe trauma to those who are exposed. Nevertheless, the federal government routinely poisons animals with this toxicant via M-44s.

These spring-loaded devices, complete with “olfactory attractants” (smelly bait), lure carnivores. When a carnivore tugs on the bait, the spring shoots a pellet of sodium cyanide into the mouth. When the cyanide pellet mixes with moisture, it turns into a deadly vapor. Sodium cyanide morphs into hydrogen cyanide gas, which is “readily absorbed into the lungs” (USDA-APHIS-ADC 1994). Death is rapid and far more humane than Compound 1080 (Goncharov et al. 2006, Hooke et al. 2006).



Placement of an M-44 into the ground.  
Courtesy, Wildlife Damage

APHIS describes sodium cyanide as “acutely toxic to both avian and mammalian species, with LD<sub>50</sub> levels generally below 10 mg/kg” (USDA-APHIS-ADC 1994). M-44s kill hundreds of non-target species (i.e., bears, badgers, kit and swift foxes, bobcats, ringtail cats, javelinas, beavers, hawks, and pets) and thousands of target species (particularly coyotes and striped skunks) each year. In fiscal year 2004, Wildlife Services killed 11,980 animals with M-44s, including 117 dogs, 3 badgers, 5 bobcats, 10,630 coyotes, 277 gray foxes, 29 kit foxes, 387 red foxes, 19 swift foxes, 1 marmot, 96 opossums, and 7 ravens (USDA-APHIS-WS 2005a, and see Table 1). Because APHIS-WS generally works in remote rural areas, there is little oversight to determine if these numbers are accurate. We suspect underreporting commonly occurs, whether intentional or not.

After only two minutes, a victim of an M-44 device can die (Hooke et al. 2006). M-44s are highly dangerous for field personnel to place,<sup>4</sup> and potentially even more dangerous for the unsuspecting (humans) that might come in contact with them (Petel et al. 2004). FWS notes that bird deaths to M-44 poisoning are underreported because of birds’ ability to leave the vicinity in a few seconds (FWS 1993).

The Environmental Protection Agency’s M-44 use restrictions under FIFRA (EPA Registration No. 56228-15) make it illegal to use them “in areas where federally listed threatened or endangered animal species might be adversely affected.” Despite such common sense federal laws and regulations, APHIS-WS has a track record of killing threatened or endangered species such as wolves and condors, as well as failing to adequately post notices—resulting in dead pets, and the agency may have harmed people—either directly or indirectly. In its Biological Opinion of 1993, the FWS noted that Animal Damage Control (one of “Wildlife Services” previous names) killed several non-target species of concern with M-44s: grizzly bears, kit and swift foxes, and ringtails. The agency found that M-44s could potentially jeopardize the continued existence of Florida panthers, jaguarundi, ocelot, Louisiana black bear, California condor, and

<sup>4</sup> In Australia, sodium cyanide applicators must have a respirator on hand, special clothing, and an antidote kit (Petel et al. 2004), whereas WS personnel are simply warned not to travel with cyanide capsules in the glove box or in tool boxes and to carry an antidote kit (USDA-APHIS 2001).

Hawaiian and Mariana crows (FWS 1993). In August 1998, Montana, Fish, Wildlife and Parks documented that a grizzly bear died from an M-44 (Exhibit 1). — part of -001

APHIS's Colorado (2005) environmental assessment states, "although the M-44 is selective for canids, APHIS-WS takes some nontargets [species that they did not intend to kill] other than canids on rare occasions" (USDA-APHIS-WS 2005a). But M-44s may be selecting for the wrong animals, as a study at the Hopland Research and Extension Center showed. Younger coyotes were more likely to be attracted to M-44s than were older animals—the ones most likely to be implicated in livestock losses (Sacks et al. 1999, Mitchell et al. 2004). As stated previously, APHIS-WS likely kills many animals that were never involved in livestock conflicts (Treves and Karanth 2003).

As a result of a lawsuit filed by the San Juan Audubon Society, Sinapu, and Wildlife Damage Review in federal court (DC) in April 2000, US District Judge Ricardo Urbina ordered that the APHIS-WS stop using double sets of M-44s near the riparian corridors along the Green, Colorado, and San Juan/Mancos Rivers because of the potential to harm California Condors (*Gymnogyps californianus*), an endangered species. Judge Urbina's decision was influenced by the fact that a condor was killed by an M-44 in 1983. The risk to condors still persists. The FWS writes, "this species could be adversely affected due to the applications of avicides and secondary poisoning is possible from carrion killed by rodenticides that have persistent effects" (FWS 1993).

Because sodium cyanide is a toxicant that could harm unintended species or humans, the EPA should determine that the manufacture, distribution, and use of this toxin are not appropriate. Furthermore, the agency charged with the use of the substance, APHIS-WS, has demonstrated that it cannot be accountable and should no longer be authorized for its use.

#### **A. THE USDA-APHIS-WS's M-44 USE RESTRICTIONS VIOLATIONS:**

In 1994, the EPA promulgated twenty-six use restrictions governing the placement of M-44s under FIFRA. Nevertheless, APHIS has, on a number of occasions, violated FIFRA and the ESA. By their very nature, M-44s are indiscriminate. As a result pets and humans have been put into danger. In each of the instances that follow, the use restrictions for M-44s were violated by APHIS. Because so many incidents have occurred, APHIS-WS's mishandling of these toxicants is a common and widespread practice across space and time.<sup>5</sup>

- 002 [
- In 1994, in New Mexico the APHIS-Animal Damage Control (now APHIS-WS) illegally placed several M-44's in the Gila National Forest. The New Mexico Department of Agriculture fined Animal Damage Control \$1,000 and suspended the license of the trapper and his supervisor.

<sup>5</sup>Petitioners intend to provide supplemental information on additional incidents upon receipt of Freedom of Information Act responses from both the EPA and FWS.



IO20372

Petition for Suspension and Cancellation of Sodium Cyanide and Sodium Fluoroacetate (Compound 1080)

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- 003 • In 1994, in Oregon, Amanda Wood Kingsley was exposed to sodium cyanide after her dog triggered an M-44 on her private property. Ms. Wood suffered secondary poisoning after she gave her dog mouth-to-mouth. APHIS-WS illegally placed the device there without her knowledge or permission. (See Ms. Wood Kingsley's letter attached, Exhibit 2.) Update to IO19181-002
- 004 • On March 3, 1999, while irrigating his farm in Crawford, Colorado with his three-year old daughter and his dog, Paul Wright witnessed his dog's death after it had triggered an M-44 illegally placed on Mr. Wright's private property. A lawsuit was filed February 2000 in federal court and the matter settled in 2001. The USDA paid the Wrights \$9,500. (See Affidavit of Paul Wright attached, Exhibit 3.) Update to IO09182-001
- 005 • In May 1999, an elderly Virginia couple lost their dog, Rufus, to an M-44. For more information, contact the Virginia Department of Agriculture at 804.371.6558.
- 006 • In December 1999, two bird-dogs were killed by sodium cyanide during a bird-hunting trip in New Mexico on state lands.
- 007 • In January 2000, a dog died from M-44 poisoning in Estacada, Oregon. (See news article attached, Exhibit 4.)
- 008 • In May 2001, Maggie and Johnny Watson's dog in Gardner, Colorado was poisoned by an M-44. Other neighbors' dogs may have also been similarly poisoned.
- 009 • On February 4, 2002, Danielle Clair's dog died by an M-44 allegedly set by APHIS-WS in Philomath, Oregon. (See letter to Representative Peter DeFazio attached, Exhibit 5.) probably this is an update to IO12821-001
- 010 • On February 21, 2006, hunter Samuel Pollock's dog triggered an M-44 near Bruff Reservoir, which is managed by the Bureau of Land Management. (Debbie Hummel, "Dog Dies from Device used to Kill Predators," Daily Herald, March 15, 2006.) Pollock never saw any posted notices.<sup>6</sup> 7.4 miles EPA Utah 20 miles from Vernal
- 011 • In April 2006, Sharyn and Tony Aguiar's two-year-old German shepherd was killed at a rock quarry in Utah. According to news reports, the couple filed a tort claim lawsuit against APHIS. Update to IO19441-008

<sup>6</sup> Personal communication. February 28, 2006. Samuel Pollock and Wendy Keefover-Ring of Sinapu.

**B. M-44s JEOPARDIZE THREATENED AND ENDANGERED SPECIES:**

The label requirements for M-44s make it illegal to use these devices "in areas where federally listed threatened or endangered animal species might be adversely affected. Each applicator shall be issued a map, prepared by or in consultation with the FWS, which clearly indicates such areas." 7 USC § 136j(a)(2)(G). Despite this requirement, APHIS has killed numerous special species with M-44s including California Condors, wolves, and at least one grizzly bear.

see  
TO 19079-  
-002

TO 20372-001

**8. COMPOUND 1080 (SODIUM MONOFLUOROACETATE) FACTUAL BACKGROUND:**

In 1972, President Richard Nixon banned Compound 1080 (sodium fluoroacetate), which was used to poison predators and prairie dogs and others. In 1985, under the Reagan/Watt Administration, the EPA was petitioned by the U.S. Department of the Interior and the livestock industry. As a result, EPA allowed this toxicant back in the limited form of LPCs (EPA 1995).

At present, Compound 1080 is registered for use only in the following 11 states: Idaho, Montana, New Mexico, Ohio (on a case-by-case basis), Pennsylvania, South Dakota, Texas, Utah, Virginia, West Virginia, and Wyoming. Of those states, Idaho, Utah, Virginia, West Virginia, Ohio, and Pennsylvania are operating under a state label (confidential personal communication, government official, 12/5/06). In 1998, California and Oregon banned Compound 1080.

Table 2 Toxicity of Compound 1080 (Source: USFWS 1993 Biological Opinion)	
Species Affected	Lethal Dose for 50% of Test Population (LD <sub>50</sub> )
13 bird species (5 taxas) (unnamed)	5.5 mg/kg body mass
Black-billed magpie (carrion feeding extreme)	1.6mg/kg body mass
Turkey vulture (carrion feeding extreme)	20 mg/kg body mass
Golden eagle	3.5 mg/kg body mass
11 carnivore & 4 herbivore species (unnamed)	0.5 mg/kg body mass
Domestic dog	0.07 mg/kg body mass
Opossum	60 mg/kg body mass
Sheep, Cattle, Mule deer	< 1 mg/kg body mass

Compound 1080 is poisonous in small amounts [see Table 2.]. In humans, 2 to 10 mg/kg constitutes a lethal dose (Goncharov et al. 2006). In other words, between 182 milligrams to 910 milligrams could kill a 200-pound person. The latency period for Compound 1080

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to take affect is hours; in one study on animals, between 5.3 to 14.6 hours (Hooke et al. 2006). Connolly (1998) described a shorter period, one-half to two hours. Death to humans takes three to five hours (Goncharov et al. 2006).

Death by Compound 1080 is slow and unpleasant. Symptoms include convulsions, heart blockage, respiratory failure, hallucination, pain, and deep depression (Eason 2002, Goncharov et al. 2006). In January 2004, the FWS found a wolf who had been illegally poisoned by Compound 1080. According to a federal agent, the wolf, which was found near a rock slide, exhibited abrasions on its paws from convulsions, its teeth were clenched, and the body rigid ("Wolf Report" with FWS press release attached, Exhibit 6.)

Although it has been studied for decades, "no effective therapy has been elaborated," but ethanol has been the "most acceptable therapeutic agent for the past 60 years" (Goncharov et al. 2006). Alcohol must be administered immediately to be effective because it is a competitive inhibitor (Goncharov et al. 2006).

#### **A. EFFICACY OF THE LIVESTOCK PROTECTION COLLARS & DISPOSAL HAZARDS:**

LPCs strap a solution of Compound 1080, which is contained in two rubber bladder reservoirs, onto the necks of sheep or goats (USDA-APHIS-ADC 1994, Connolly 1998). The collars do not protect the individual that wears the collar, but the proponents' aim is to "target" the predator that kills sheep or goats. While targeting an individual animal is laudable, LPCs have inherent problems such as spills or tendencies for collars to disappear. Fundamental accountability and disposal problems associated with LPCs are inherent.

APHIS-WS wrote, "when the [livestock protection] collar is punctured, all contents are evacuated. Some of the compound enters the coyote's mouth, some falls around the mouth, some seeps into wool or hair near the collared sheep or goat, and some eventually falls to the ground" (USDA-APHIS-ADC 1994). By their design, spills associated with LPCs can occur. All of the contents of the spill may not be found, particularly if the carcass of the sheep or lamb is dragged. While some soil micro-organisms can break down 1080, conditions such as extreme cold or drought might cause 1080 residue to persist in the soil for several weeks or months (Eason 2002).

Furthermore, livestock protection collars can be easily lost or punctured by vegetation or barbed wire. In one study, 107 collars were either inadvertently lost or punctured, while only 57 were pierced by coyotes (Watson 1990). Connolly (1998) suggests that coyotes can bury collars or drag them away from sheep carcasses and that about half of missing collars were not recovered in research studies. Apparently, LPCs routinely go missing which constitutes "imminent harm" to the environment. 7 U.S.C. §136(1). More alarming, the EPA and APHIS rely on individuals to properly dispose of Compound 1080 once a spill has occurred.

Livestock producers, who have been trained by licensed applicators, are expected to incinerate or bury everything that has come into contact with Compound 1080. Those

that bury the toxicant must do so under three feet of soil (Connolly 1998). The burial site is supposed to be one-half mile from human habitation and away from water sources; no more than 10 collars can be buried at one site and the sites must be ten feet apart from each other (Connolly 1998). Relying on livestock producers to properly dispose of Compound 1080, without any oversight by certified personnel, presents potential problems including the theft or improper disposal that could cause intentional or unintentional human poisonings to occur.

Connolly (1998) writes that while the certified applicator of Compound 1080 is ultimately responsible for the disposition of this toxicant, "a noncertified person who has received adequate instructions" from a certified applicator may be able to "store collars, check collars in the field, remove collars, repair or dispose of damaged collars" as required by the use restrictions (Connolly 1998). As the USDA's Office of Inspector General has found, not even the federal government itself can be relied upon to properly maintain control over these dangerous toxicants (OIG 2006a) (supra). Because carcasses and spills associated with Compound 1080 must be handled as hazardous waste (Mitchell et al. 2004), and because the EPA relies upon individuals who may or may not be properly trained to handle this toxicant or who purposely do not handle this the waste from this toxicant properly, environmental risks could and probably do occur. For these reasons, the EPA should prohibit the usage of this substance in the U.S. and also ban its manufacture. Contamination to soil, water, and species from improperly stored or disposed Compound 1080 poses foreseeable imminent hazards to the environment.

#### **B. USAGE VIOLATIONS INVOLVING COMPOUND 1080:**

-012 In 1989, a newly-hired predator control agent to the Wyoming office of the Wyoming Department of Agriculture found that those officials had hoarded Compound 1080 despite the ban. They sold 1080 to private individuals who used it to poison wildlife, including bald and golden eagles (Robinson 2005). In 1991, the FWS and the EPA raided the offices of the Wyoming Department of Agriculture; the FWS subsequently engaged in a law enforcement action that led to several convictions (Ibid.). (FWS's investigative documents involving many defendants attached, Exhibits 7 and 8.) But that would not be the end of illegal poisonings.

-013 In 2001, approximately 30 pets were poisoned by 1080 in Grand Junction, Colorado and the investigating police officer, David Palacios, who handled the poisoned animals experienced, "flu like symptoms, only 10 times worse" (Lofholm 4/12/01). The Grand Junction police and federal investigators were never able to apprehend the culprit who ultimately dumped the poison into the local sewer system (Lofholm 3/15/01, 4/12/01).

-014 The EPA's ELLS Pesticide Report shows that in 1984, 3 magpies died from Compound 1080 and in 1989, 58 ravens were poisoned by the substance. We do not know if these poisonings were legal under the auspices of the EPA's use restrictions, but on its face, they may have constituted violations of both FIFRA and the Migratory Bird Treaty Act.  
-015

Because of the historic illegal usage of Compound 1080 and the potential threat this can pose to wildlife, to people, and to pets, the EPA should ban this toxicant's usage.

### **C. NON-TARGET SPECIES & JEOPARDY OF SPECIAL SPECIES:**

Most of the current literature on Compound 1080 research comes from New Zealand and Australia where Compound 1080 is used in baits or in M-44 ejectors. As a result of this practice, researchers have found that numerous non-target species (including herbivores) can die from Compound 1080 (Lloyd and McQueen 2000, Eason 2002, Martin and Twigg 2002, Martin et al. 2002, Marks and Wilson 2005). The FWS found that Compound 1080 used in LPCs is a "direct exposure risk to grizzly bears and gray wolves" and thus made jeopardy determinations related to Compound 1080 for those species (FWS 1993). APHIS found that Compound 1080 may affect golden eagles, bald eagles, ocelot, San Joaquin kit fox, ocelot, and jaguarundi (USDA-APHIS-ADC 1994).

It is commonly known that birds, such as vultures, ravens, magpies, hawks, and even mammals can flee an area in seconds, but since Compound 1080 takes hours to act, their poisoned corpses may not be found readily. Sodium fluoroacetate is, however, "highly toxic to birds and mammals" (U.S. Department of Interior 1993) [Table 2.] Furthermore, Compound 1080 can cause secondary poisoning to predators and even to herbivores (FWS 1993, Eason 2002). But while Compound 1080 can be eliminated through metabolism by animals that receive non-toxic doses, carrion poisoned with 1080 can be toxic for many months (Eason 2002). The EPA's RED for 1080 states that scavengers, including those that are threatened and endangered, could be affected by Compound 1080 if those animals consume the meat around the head or neck of dead livestock that wore LPCs (EPA 1995).

Despite the foregoing, APHIS claims that while non-target species have been known to scavenge from a sheep or goat carcass wearing the collar, "none were known to be poisoned by Compound 1080" (USDA-APHIS-ADC 1994). APHIS's argument stands in opposition to the one drawn by the EPA and other researchers. Thus, the veracity of their claims about the lack of hazards involved in using Compound 1080 must be thoroughly critiqued by the reviewers of this petition.

Because of the toxicity of Compound 1080 and potential for primary and secondary poisonings (including the possibility of poisoning species listed as threatened or endangered under the ESA, such as lynx, wolves, grizzlies, and condors), and the likelihood that LPCs will be inadvertently punctured or lost, and that 1080 could be used as a weapon of terror, APHIS-WS should stop manufacturing and using this dangerous toxin.

### **9. EPA'S DUTY TO CONSIDER THE AGRICULTURAL ECONOMY:**

As part of its duty in administrative reviews of pesticides pursuant to 7 USC §136d(b), the EPA's Administrator shall factor in the "production and prices of agricultural

commodities, retail food prices, and otherwise on the agricultural economy.” Our analysis demonstrates that there are compelling economic reasons to prohibit M-44s and Compound 1080:

First, predators kill only a fraction of the nation’s livestock – many more livestock die unintentionally from weather problems (i.e. drought or lightning), from a laundry list of health problems (i.e. birthing complications or disease), or from rustling [Figures 1 and 3, attached]. Mammalian carnivores killed 0.18% of the total U.S. cattle production in 2005 and 3% of the sheep production in 2004. In comparison nearly 4% of cattle and 5% of sheep died from non-predator causes [Figures 1 and 3].

Second, the taxpayer is forced to lay out hundreds of millions of dollars each year through federal, state, and local taxes to pay for lethal predator control programs. In fiscal year 2004, APHIS killed 2.7 million animals, including over 100,000 mammalian carnivores. [See Table 1, appended herewith]. Wildlife Services spent in excess of 100 million dollars in fiscal year 2004. APHIS-WS spends little resources on developing or using non-lethal means to “control” wildlife. More importantly, APHIS-WS kills few carnivores using M-44s (12%) and Compound 1080 (0.4%), but risks the health of the public and of species (including those that enjoy protections under the ESA).

Third, under FIFRA the standard use of care is **defined** as “when used in accordance with widespread and commonly recognized practice” (7 USC 136A(c)(5)(5)). As demonstrated throughout this petition, APHIS-WS often violates FIFRA’s label requirements. Further, according to the Office of Inspector General, APHIS has also violated the Public Health Security & Bioterrorism Preparedness & Response Act on two occasions. Therefore, pursuant to these statutes, APHIS’s standard use of care amounts to a widespread and commonly recognized practice and must therefore be considered in the cost/benefit analysis undertaken by the Administrator.

Fourth, the biological costs of removing predators are at least two fold. Without carnivores in their habitats, ecosystems can fail to function (Smith et al. 2003, Ripple and Beschta 2006), and the numbers of species in those ecosystems decline (Crooks and Soule 1999, Henke and Bryant 1999, Smith et al. 2003, Ripple and Beschta 2006). Without predators, we lose free “ecosystem services” such as clean air and water.

Fifth, people have complex perceptions and values about wildlife (Kellert and Smith 2000, Teel et al. 2002).<sup>7</sup> According to the USDI, those values translate into hundreds of billions of dollars annually through the spending of wildlife watchers, anglers, and hunters. On the other hand, the sheep industry benefits only a handful of people. The Colorado Wool Growers Association has 170 members (Talley 2004) in a state of over four million people. The U.S. sheep industry has been in dramatic decline over the past 20 years and fluctuations in the sheep industry are tied to labor and hay prices, but not

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<sup>7</sup> Americans maintain complex ideas about wildlife, their values are broken into categories: the scientific, naturalistic, aesthetic, humanistic, moralistic, or symbolic (Kellert and Smith 2000). The leading values toward wildlife are positive: moralistic and humanistic (affection) (Kellert 1996).

predation on livestock by coyotes and other carnivores (Berger 2006). The table "Sheep and Lamb Inventory" shows that the number of sheep and lambs in Colorado have decreased to 360,000 for 2004, compared with 690,000 in 1984 and from a high of 840,000 in 1990—a nearly 60% decrease (USDA-NASS and Colorado Depart. Agric. 2004) [Exhibit 9]. Even APHIS-WS admits, "the sheep and wool market had declined making it *uneconomical to raise sheep*" (APHIS-WS June 2005 CO PDM EA at 11, emphasis added).

Finally, native carnivores such as coyotes, wolves, bears, badgers, and lynx have the inherent right to exist. We humans have come to understand that the planet is a much poorer place without these species. As a result of this sentiment and the requirements of laws such as the ESA, reintroduction efforts have occurred such as the FWS's efforts to restore wolves back into the Northern Rockies and the Colorado Division of Wildlife's efforts to return lynx back into the Southern Rockies.

#### **A. LIVESTOCK LOSSES AND PREDATORS:**

##### **I. CATTLE:**

Every year the U.S. Department of Agriculture's National Agricultural Statistics Service (NASS) reports on the U.S. cattle production inventory. In 2005, U.S. producers raised 104.5 million head of cattle (NASS 2005a). Approximately every five years, NASS reports on unintentional cattle deaths as a result of predation, weather issues, disease etc. The latest cattle death report was released in May 2006 (NASS 2006). The government's own figures again show that mammalian carnivores kill very few livestock (0.18%) when compared with annual production levels.

Of the 104.5 million cattle that were produced in 2005, 190,000 (or 0.18%) died as the result of predation from coyotes, domestic dogs, and other carnivores (NASS 2006). In comparison, livestock producers lost 3.9 million head of cattle (3.69%) to all sorts of maladies, weather, or theft (NASS 2006) [Figure 1, attached].

Coyotes were the primary cattle predators—they killed 97,000 cattle in 2005, followed by domestic dogs—which killed 21,900 cattle. Wolves killed remarkably few cattle, 4,400 head, as did the felids (NASS 2006) [Figure 2, attached].

##### **II. SHEEP:**

In 2004, sheep producers raised 7,650,000 animals nationwide (NASS 2005b). Of that figure, native carnivores and domestic dogs killed 3% of the total production, or 224,200 sheep (NASS 2005c). In comparison, 5% of sheep died from illness, dehydration, falling on their backs or other causes (NASS 2005c) [Figure 3, attached].

Coyotes and domestic dogs were the main carnivores involved in sheep predation in 2004 (NASS 2005c) [Figure 4, attached].

Despite decades of predator control, which has resulted in more than 5 million deaths of predators in the last six decades, lethal predator controls do not benefit sheep growers (Berger 2006). Market forces (primarily the price of hay, wages, and lambs) play a far greater role in the decline of the sheep industry than do predators (Berger 2006). On the other hand, large-scale predator eradications are biologically expensive and inherently non-selective (Mitchell et al. 2004). In fact, one study found no correlation between the number of coyotes killed and the number of lambs lost (Knowlton et al. 1999, Mitchell et al. 2004). Socially and biologically expensive, lethal predator controls do little to benefit the sheep industry.

Sheep and lambs are frequently left unguarded on open range. USDA biologists Frederick Knowlton et al., write, "sheep have been selectively bred for thousands of years to produce animals that are tractable and suited to particular husbandry techniques" (Knowlton et al., 1999). Simply put, domestic sheep have few predator-avoidance strategies; therefore humans must take steps to protect them. Even wild sheep and goats use cliffs or steep terrain to avoid predators. How can domestic sheep expect to fare on open, relatively flat range?

There is no purpose or need to engage in broadscale wildlife-killing activities because few livestock are killed by predators, according to NASS's own data—0.18% of cattle and 3% of sheep nationwide. Berger (2006) reveals, using decades of evidence, that the sheep industry does not fare any better if predator control efforts are undertaken because the primary costs to ranchers involve hay and labor. The cost of removing native carnivores from ecosystems is enormous, however, in terms of biological diversity and functionality (Miller and Foreman 2003, Smith et al. 2003, Stolzenburg 2006).

#### **B. THE ECONOMICS OF CARNIVORES IN THEIR ECOSYSTEMS:**

Economic analyses can be more than a financial ratio model. The Administrator's analyses must consider trade-offs and long-term benefits and socio-cultural effects. Importantly, the definition of "cost-benefit" and "socio-economic" analyses are entirely different. The former refers to the value of the ratio of costs to benefits, while the latter refers to the effects to society—for example, what benefit does society derive when the federal government kills predators in a specific region? What benefits do healthy complex forests/grasslands/sagebrush provide to humans in terms of *ecosystem services* such as pure air, clean water, intact soils, and healthy plant communities that could potentially be used for medicinal purposes? How will killing predators alter plant communities that may later affect species of special concern? There is a myriad of intangible benefits from having small, medium, and large predators, and other species living in complex ecosystems.

In 2004, APHIS-WS killed 101,225 mammalian carnivores, 11,872 with M-44s. The total killed by M-44s represents 12% of the total number of mammalian carnivores killed. APHIS-WS also killed 108 non-mammalian carnivores (96 opossums, 1 marmots, 7

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ravens, and 4 feral hogs) with M-44s. The total of all animals killed by sodium cyanide in 2004 equals 11,980.

On the other hand, APHIS-WS killed 45 animals (all coyotes) with Compound 1080, or 0.04% of the total number of mammalian carnivores killed. No other animals were killed with Compound 1080.

Therefore, because APHIS-WS kills only 12% of mammalian carnivores with sodium cyanide, and only 0.04% with Compound 1080, these toxicants are not necessary or even vital to their operations. Yet, the risk of stockpiling and using these toxicants pose an enormous risk to the public. The accidental poisoning of threatened or endangered species is also unacceptable because it could jeopardize populations. So when the Administrator balances out the risk to wildlife, people, and to pets, the Administrator must conclude the risk is too great and that the risk constitutes imminent harm.

### C. THE ECONOMICS OF WILDLIFE WATCHERS, HUNTERS, AND ANGLERS:

The U.S. Department of Interior, Fish and Wildlife Service et al. reported that in the U.S. in 2001, 13 million people hunted, 34.1 million fished, but 66.1 million people were "wildlife watchers" (FWS and Census Bureau 2001). In their Colorado-specific report (FWS and Census Bureau 2003), agencies found that 1.55 million people were wildlife watchers who spent \$624 million; hunters and anglers also participated greatly in Colorado's economy [Table 3.].

Table 3 U.S. Dept. Interior (2003). 2001 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, Colorado. Activities in Colorado by U.S. Residents.			
	Anglers	Hunters	Wildlife Watchers
Participants	915,000	281,000	1,552,000
Total Expenditures	\$645,891,000	\$382,599,000	\$624,402,000

According to a July 22, 2003 press release from the Colorado Division of Wildlife, "wildlife watching is a viable component of Colorado recreation, generating millions of dollars annually for the state's economy" (Colorado Division of Wildlife July 22, 2003).

Despite this complexity, utilitarian views trump other American values when it comes to wildlife management. While wildlife watchers and anglers each spent over \$600 million, and hunters spent nearly \$400 million on their interests (for a total of nearly \$1.7 billion), Wildlife Services spent \$101,460,740 killing wildlife—a contradiction of values.

As an economic exercise, compare hunting, angling, or wildlife watching to raising sheep or cattle. Ranching is a drop in the bucket compared to funds spent on wildlife watching in Colorado. And Colorado cannot begin to compare its wildlife watching with that of Wyoming or Montana which benefit from having a suite of native carnivores (wolves and

bears) in Yellowstone National Park. The Yellowstone area economy generates approximately \$35 million dollars per year from wolf watchers  
<<http://www.forwolves.org/ralph/wolf-economic-impact.htm>>.

The socio-economic considerations for banning Compound 1080 and M-44s include:

- Analysis of economic importance of wilderness areas to recreationists, including hikers, hunters, anglers, and wildlife watchers.
- Analysis of economic sectors showing the relative importance of agriculture to other sectors of the economy. In comparison, how much does wildlife watching contribute to the economy?
- Analysis of the economic advantage derived by the agriculture sector by predator damage management—compared to other unintended livestock losses stemming from disease, illness, birthing problems or stochastic weather events etc.
- Analysis of the economic advantage derived by the agriculture sector by predator damage management when compared to other costs involved with the livestock industry such as labor or feed (hay).
- Analysis of the cost effectiveness of predator damage management programs to include a listing of the costs of apparently expensive methods such as poisoning verses the benefits derived from their use.
- Analysis of the opportunity costs that include effects to ecosystems by elimination of predators, including disruption of the predator/prey balance.
- Analysis of the cumulative effects to society, such as a decline in ecosystem services (*i.e.*, clean water, soil fertility) from the continuation of this program.
- APHIS-WS frequently violates FIFRA's label requirements and has violated the Bioterrorism Act, therefore, their standard use of care amounts to a widespread and commonly recognized practice and must therefore be considered in this cost/benefit analysis.
- Cost-benefit analysis for wildlife damage management in terms of society's willingness to pay for such control.
- Public surveys assessing the public's willingness to pay and/or willingness to accept lethal toxicant controls need to be conducted in order to determine quantifiable benefits and quantifiable costs of wildlife damage programs.

The EPA Administrator shall factor in the agricultural economy as part of his duty when reviewing pesticides under FIFRA. 7 U.S.C. §136d(b). Given that: 1) respiratory, birthing, and digestive problems, weather, and theft pose significantly greater problems

for livestock growers than does predation by carnivores, and 2) APHIS-WS kills on order of 100,000 mammalian carnivores each year. But in FY04, only 12% of predators were killed by M-44s and only 0.04% were killed by Compound 1080, the economics for allowing these lethal toxicants to exist is unjustifiable when weighed against the imminent harm these toxicants pose to the environment.

**D. THE SOCIO- AND BIOLOGICAL  
ECONOMICS OF NON-LETHAL ALTERNATIVES:**

Non-lethal methods of control can be very effective in reducing livestock losses. Unfortunately, livestock producers are not required to use these methods and few economic incentives favor non-lethal controls because producers enjoy highly-subsidized-lethal-predator controls.

But by failing to consistently help livestock growers with non-lethal wildlife control methods, APHIS-WS perpetuates the need to continue its lethal program and its unsafe usage of toxicants. To make our point, county commissioners in Marin County, California recently stopped their appropriations to APHIS-Wildlife Services. Instead, they invested \$40,000 per year in non-lethal alternatives such as fences, bells, and guard animals for ranchers. After five years of this experimental program, County Commissioner Stacy Carlsen told a newspaper that ranchers experienced about a 2.2% loss of sheep compared with a 5% loss when Wildlife Services offered lethal controls (Brenner 2005). As the Marin County example shows, the idea of investment in long-term non-lethal controls can be more effective, more safe, and less controversial than the lethal approach. The Marin County experiment holds promise for a larger broad scale switch to non-lethal controls.

While coyotes have proven resilient in the face of persecution in the long term, their losses not only change their own population demographics but change the biological diversity in ecosystems. (These concepts are elaborated on in the coyote section below).

A variety of non-lethal techniques exist to protect livestock (Andelt 1996). Sheep, because of their docile nature, require special protections. Human herders and several types of guard animals (llamas, some breeds of dogs, and burros) can be used. Sheep and goats can be bonded with cattle because they more aggressively defend themselves than the sheep. Also concentrating sheep into small areas reduces livestock losses (Sacks and Neale, 2002). During lambing and calving season, researchers have advised ranchers to bring their livestock into barns, pens or sheds. Research on synchronizing the birthing season with that of wild prey species has also proven effective. Scaring devices, like strobe lights, firecrackers, and noisemakers or flandry (flags tied to ropes), offer yet other alternatives. Finally, ranchers should be advised to quickly remove all livestock carcasses to prevent scavengers from habituating to the taste of livestock. The use of two or more methods together has been proven to be the most effective.

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Moreover, while not all coyotes kill sheep, APHIS-WS and others use the "sledge hammer" approach -- that is, killing a large number of predators so that the "offending animal" will be among the casualties; however, intensive lethal controls can affect coyote demographics (Mitchell et al. 2004). For coyotes, traps, snares, and poison baits often attract younger coyotes, and not the older or alpha animals that are usually implicated in livestock depredations (Mitchell et al. 2004).

#### **10. SOME SPECIES AFFECTED BY SODIUM CYANIDE AND/OR COMPOUND 1080:**

##### **A. Lynx (*Lynx canadensis*):**

Lynx could potentially trigger an M-44 because their close relative bobcats (*Lynx rufus*) are killed by M-44s on occasion. In FY04, APHIS-WS killed 5 bobcats with M-44s. Moreover, FWS considers M-44s a hazard to other cats such as Florida panthers, ocelots, and jaguarundis (FWS 1993). Cats are known to scavenge (Bauer et al. 2005) and thus the scented bait on an M-44 could lure this tufted-ear cat. Historically, lynx were easily trapped and poisoned (Schenk 2001; Schenk and Kahn 2002). Restored to Colorado in 1999, lynx are a threatened species under the ESA. Over 200 lynx have been released into Colorado since 1999, over 100 kittens have been born in that time, and the animals are dispersing into several states, especially Wyoming, Utah, and New Mexico.

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Despite these advances in lynx' recovery, the August 23, 2005 biological opinion from the FWS fails to limit traps, snares, and M-44s in occupied lynx habitat in Colorado. Although mitigation measures for traps and snares are discussed, no effective mitigation can be made for M-44s, which are inherently indiscriminate. Worse, once lynx cross the New Mexico border, they are afforded no federal protections at all. Because it would be imprudent for the EPA to continue to allow the usage of M-44s in areas where lynx might live or where they may emigrate, the EPA and FWS should reinstitute consultation under §7(a)(2) of the ESA, and the EPA should ban these toxicants.

##### **B. Wolves (*Canis lupis*):**

Gray wolves are presently listed as endangered under the Endangered Species Act throughout all of their historic range in the Lower 48 States (except in those areas defined as "experimental/non-essential"), and a recent federal court ruling has found that recovery efforts for wolves have yet to effect recovery of the species across all or a significant portion of its former range, which includes Colorado. *Defenders of Wildlife v. Secretary, U.S. Department of the Interior*, 354 F. Supp. 2d 1156 (D. Or. 2005).

Lethal predator control activities, including the indiscriminate usage of M-44s within or adjacent to occupied wolf territory pose a significant threat to wolves' recovery—and to the ability of these nascent wolf populations to disperse into and occupy suitable wolf habitat outside of the reintroduction area.

In the past decade, numerous predator control activities by APHIS-WS have resulted in the incidental take of wolves. A sampling of some of these incidental take events

demonstrates that APHIS-WS predator control activities may adversely affect wolf recovery (including dispersal into other suitable habitat):

- January 1995, Priest River, Idaho – M44 sodium cyanide cartridge (lethal). — see IO 1940 & IO 02218 & IO 11688
- May 1997, Alder, Montana -- M44 sodium cyanide cartridge (lethal). — see IO 11688-002
- April 1998, Alder, Montana -- M44 sodium cyanide cartridge (lethal). — see IO 11688-003
- December 1998, Powell, Wyoming -- M44 sodium cyanide cartridge (lethal). — see IO 11688-004
- In Spring 2001, a wolf dispersing possibly from Minnesota or Canada was killed in South Dakota by an M-44. A year later forensic tests verified that it was a wolf (Brokaw 2002). — see package IO 11656

Moreover, wolves are dispersing from Yellowstone National Park and could potentially die from M-44s or Compound 1080 outside of the Yellowstone area. We know wolves are dispersing because of recent sightings and mortalities:

- one was killed on Interstate 70 near Idaho Springs, Colorado in 2004;
- the Colorado Division of Wildlife filmed a black wolf in North Park near the Colorado-Wyoming border in February 2006; and
- in August 2006, a wolf allegedly died while in a trap in Utah.
- In January 2004, a wolf was poisoned with Compound 1080 near Clayton, Idaho (Exhibit 6). — grey wolf — update to IO 19079-008

Because wolves are moving from the Northern Rockies into other habitats, and because sufficient mitigation measures by the FWS, APHIS-WS, and other federal agencies have not been undertaken, the EPA must step in and abolish M-44s and Compound 1080 because they can indiscriminately kill wolves, or in the alternative, reinstate consultation pursuant to §7 of the ESA.

### C. Swift Fox (*Vulpes velox*):

Prior to settlement by Europeans, swift foxes were abundant across short-and mixed-grass prairies of North America (Schauster et al. 2002b, Kamler et al. 2003, Finley et al. 2005). During the 19<sup>th</sup> century, however, tens of thousands of swift fox pelts were bartered at trading posts (Schauster et al. 2002a). Later, widespread cultivation of the Great Plains and predator-killing activities (involving broadcast toxicants—such as Compound 1080, sodium cyanide, and strychnine—shooting, trapping, and predation by domestic dogs), forced swift foxes into dramatic decline (Schauster et al. 2002a, Schauster et al. 2002b). They were largely extirpated (Fitzgerald et al. 1994).

In the 1950s, swift fox populations reportedly began to recover after poisoning campaigns lessened; researchers speculate they benefited the most after Compound 1080 was banned in 1972 (Schauster et al. 2002a).

In February 1992, the Biodiversity Legal Foundation and wildlife biologist Jon Sharps petitioned for the swift fox to be listed as endangered under the Endangered Species Act. In response to the listing petition, ten states—where swift fox ranged or had formerly

ranged—formed the Swift Fox Conservation Team (SFCT) (Stuart and Wilson 2006). In 1995, the FWS determined that their listing was “warranted, but precluded” because of other FWS priorities. In 1997, the SFCT wrote an assessment and drafted a conservation plan. As a result, in 2001, the FWS removed swift fox as a candidate for listing under the Endangered Species Act.<sup>8</sup>

Currently, the core area for swift fox populations are found in Colorado, Kansas, and Wyoming—although they are patchily distributed in the core area, and across their former range, their status remains a concern (Schauster et al. 2002a).

Despite removal from the ESA candidate list, swift foxes continue to be imperiled and their populations should be enhanced and recovered. Swift foxes should not be squandered because of indiscriminate predator controls, especially M-44s which are placed throughout the Mid-West and the West. In FY04, APHIS-WS killed 21 swift foxes, 19 with M-44s.

#### **D. Kit Fox (*Vulpes macrotis*):**

Kit foxes are slightly smaller than swift foxes. They range in western Colorado to California in habitats characterized by desert shrub, saxicoline brush, juniper-sagebrush, and rimrock habitats (Fitzgerald 1994). Like swift foxes, they dig their own dens and rely on lagomorphs, rodents, and birds in their diet (Fitzgerald 1994). Kit fox populations are in decline throughout their range because of historic predator and rodent control (Meaney et al. 2006). Currently their populations continue to decline across their range because of fragmentation of habitat, oil and gas development, ORV usage, and domestic livestock grazing (Meaney et al. 2006). There are less than 100 individuals in Colorado and they could be nearly extirpated. They are in decline in California, Oregon, Idaho, Utah, and Nevada (Meaney et al. 2006). They are still harvested in Arizona, New Mexico, and Texas although there are no population data (Meaney et al. 2006). They enjoy no federal protections (Meaney et al. 2006), although they should. In 2004, APHIS-WS killed 40 kit foxes—3 by leghold traps, 8 by neck snares, and 29 by M-44s.

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#### **E. Grizzly Bears (*Ursus arctos horribilis*):**

Grizzly bears have large home ranges that include shrub cover, forested land and open areas. Home ranges are, on average, between 73 and 414 sq. km but can be as large as

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<sup>8</sup> There is a scientific nuance here that merits elaboration. FWS characterized the fox as abundant and widespread on the basis of county data collected from 1995 –2000 [66 Fed. Reg. 1298]. The conclusion from their analysis of available data was that the foxes occupied 38 – 41% of their historic range. This suggests an error in FWS’s logic, as the standard for listing species under the ESA since 1973 has included protection for species imperiled in a significant portion of their range. Surely 59 – 62% of the swift fox’s range, which FWS characterizes as unoccupied, is a significant portion, especially given FWS’s characterization in the Candidate Form that “swift fox populations appear to have been extirpated in North Dakota, are declining in South Dakota, and are present in low numbers in only a few counties in western Nebraska” [Id. at 4.]

2,600 sq. km. Bears primarily rely on vegetation for sustenance and are important seed dispersers in ecosystems. Bears also eat meat either through scavenging or hunting.

Each grizzly bear population in the Lower 48 is listed as threatened under the ESA, and distribution is primarily limited to recovery zones. One recovery zone—Selway-Bitterroot—has no bears at all. Despite the fact that their habitat is steadily shrinking because of anthropogenic threats, grizzly bears are an umbrella species; that is, as the bears disappear because of lack of habitat, other species will likely decline as well.

Grizzly bears' large spatial requirements increase the likelihood that a bear may happen upon an M-44. Grizzly bears are vulnerable to M-44s, and in even greater threat since the FWS issued its 1993 biological opinion concerning toxicants and wildlife. Low distribution numbers, low reproductive rates, disappearing and increasingly fragmented habitat as well as high human-caused mortality have put grizzly bears on the brink of extinction in the U.S.

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According to the Montana Fish, Wildlife and Parks, one adult male grizzly was poisoned by an M-44 in August 1998 near Helmville, Montana (Exhibit 1). The intentional or accidental poisoning, especially if it involves a breeding female, can threaten viability of the grizzly bear population. Given the cumulative effects of increasing habitat fragmentation and isolation, we cannot afford to put any more bears in jeopardy.

Historic indiscriminate predator control activities are the reason the grizzly bear struggles in the U.S. Today, human-caused mortality is the single largest contributor of bear deaths. Using M-44s is irresponsible and unnecessary, and endangers grizzly bear populations.

The mandates of both FIFRA and the ESA require that the EPA ban the use of sodium cyanide and Compound 1080 because they pose an imminent hazards and unwarranted take of this species. Also, the EPA should reinitiate consultation under §7 of the ESA with the FWS for grizzly bears.

#### F. Coyotes (*Canis latrans*):

Despite being the target of elimination campaigns since at least 1905, the highly adaptable coyote has expanded its range three-fold. In most places in the West, wolves no longer exploit coyote populations. However, after wolves were reintroduced into Yellowstone National Park in 1995, coyote densities have declined by 50 percent in some areas and even up to 90 percent in wolf packs' core areas (Crabtree and Sheldon 1999, Smith et al. 2003). Perhaps because coyotes have evolved with such exploitation pressures, they have adapted to relentless human persecution with higher reproduction rates and other means for survival.

Despite their persecution, coyotes play a keystone role in the ecosystems they inhabit—preventing mesopredators (house cats, skunks, raccoons) from killing ground-nesting birds, to creating species richness and diversity, to protecting kit foxes from red

foxes (Cypher and Spencer 1998, Crooks and Soule 1999, Henke and Bryant 1999, Gompper 2002). Coyote eradication programs are also fiscally costly (Berger 2006).

When humans exploit coyote populations, these canids adapt by utilizing various breeding strategies such as producing more pups or increasing the number of females that breed in a population; thus, underscoring the need for APHIS-WS to use nonlethal controls and human-education techniques wherever possible. Moreover, the destruction of coyote territories through killing programs may make endangered species and other sensitive species more vulnerable to disease or to other predators (Sovada et al. 1995, Cypher and Spencer 1998, Kitchen et al. 1999).

The biological mechanisms for unanticipated consequences from coyote control are several:

- Where coyotes have been controlled, ingress of coyotes from outside the control area will replace killed coyotes and the ratio of males to females will increase (Knowlton 1972). After control actions, there may be an initial decrease in coyote population density, but the density may then promptly increase by the ingress of solitary coyotes or infusion from neighboring coyote packs (Crabtree and Sheldon 1999).
- Coyote control may result in the reproductive release of reproductively suppressed females, as follows: in unexploited coyote populations, coyotes have tight social networks in which only the alpha (dominant) pair of coyotes breed (Crabtree and Sheldon 1999). Subordinate individuals in the pack do not breed, likely due to the type of behavioral-physiological suppression found in many other mammals showing such reproductive skew (Wasser and Barash 1983). With exploitation, this reproductive repression disintegrates, and more coyotes within a social group will consequently breed (Crabtree and Sheldon 1999).
- Knowlton et al. (1999) found that unexploited populations of coyotes tend to have older family structures characterized by lower reproductive rates than exploited populations. The latter group is likely to be characterized by younger adult members, and larger numbers of breeding members with increased litter sizes (Knowlton et al. 1999).
- Coyote control can result in a smaller group size, which increases the amount of food per coyote and decreased intra-specific competition. This increased ratio of food per coyote leads to higher litter survival rates, as the increase in the availability of food improves conditions of breeding females. Pups consequently enjoy increased birth weights and increased survival rates (Goodrich and Buskirk 1995).
- Other researchers found low yearling reproduction, low litter size, and high pup mortality on their study site, where they describe exploitation levels as light (Gese et al. 1989). An increased rate of pup survival increases the need for more food



for pups, which may alter coyote forage and predation patterns (Gese et al. 1989), thus building in more unpredictability for a coyote control model.

- Mitchell et al. (2004) write, "new studies are needed that will examine coyote behavior and the efficacy of depredation management while following strict experimental protocols under operational conditions. These studies must be well designed, with appropriate controls and randomization. This level of rigor is rare in coyote depredation research."
- The coyotes most likely killed by M-44s are younger animals, not the older one that are most likely involved in livestock incidents (Sacks et al. 1999). Selective removals of coyotes (not broadscale removals) can be more effective for sheep producers (Blejwas et al. 2002).

## **11. LEGAL STANDARDS:**

### **A. CANCELLATION:**

FIFRA authorizes EPA to cancel a pesticide's registration if, "when used in accordance with widespread and commonly recognized practices, [the pesticide] generally causes unreasonable adverse effects on the environment" (7 U.S.C. § 136d(b)). Those effects include "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide" (7 U.S.C. § 136 (bb)). The "environment" as used in this context would include all wildlife species, regardless of their federal status.

Additionally, the ESA at §7(a)(1) mandates that federal agencies have a specific and broadly defined duty to conserve threatened and endangered species and to provide programs to ensure for these special species' conservation. The ESA at §7(a)(2) requires that the EPA consult with the FWS to ensure that species and their habitat is not jeopardized by actions. Section 9 of the ESA prohibits the "take" of species, that is, one cannot harass, harm, injure or kill a threatened or endangered species.

As discussed in detail (supra), the evidence shows that continued registration of sodium cyanide and sodium fluoroacetate results in serious adverse effects on public health and safety, harm to species that do not enjoy special federal protections, and the potential for jeopardy for species of special concern in violation of FIFRA and the ESA.

Furthermore, alternatives to lethal toxicants can alleviate adverse economic consequences. In a cancellation proceeding, the registrants bear the burden of proving that the FIFRA cost-benefit standard has been met, and registrants will not be able to meet that standard here (40 C.F.R. § 154.5). Thus, EPA should act expeditiously to issue a Notice of Intent to Cancel registration of CCA (40 C.F.R. § 154.34(a)), and should set about preparing a comprehensive evidentiary record for cancellation proceedings.

## **B. SUSPENSION**

FIFRA authorizes the EPA to suspend a pesticide's registration when the pesticide presents an imminent hazard to public health and the environment (7 U.S.C. § 136d(c)(3)). An "imminent hazard" is "a situation which exists when the continued use of a pesticide during the time required for cancellation proceeding would be likely to result in unreasonable adverse effects on the environment" (7 U.S.C. § 136d(f)). On a daily basis, the continued registration of sodium cyanide and Compound 1080 creates an imminent hazard into the foreseeable future because these toxicants are highly indiscriminate. Because there is a substantial likelihood that significant harm can come to both the public's health and safety "or will involve unreasonable hazard to the survival of a species declared endangered or threatened" (7 U.S.C. § 136d(f)), these pesticides must be suspended.

Furthermore, based on the nature and extent of the information presented in this petition, the risks to the public of continued use of the toxicants sodium cyanide and Compound 1080 during the cancellation process far outweigh the benefits associated with its continued registration. Consequently, FIFRA mandates that the EPA issue a suspension order to protect the public.

## **12. CONCLUSION:**

FIFRA authorizes EPA to act as a regulatory gatekeeper for pesticides. Under FIFRA, EPA has the power to protect the public by issuing a Notice of Intent to Cancel registration of sodium cyanide and sodium fluoroacetate. As the foregoing evidence demonstrates, the legal standards for suspension and subsequent cancellation are met because the continued registration of these toxicants causes unreasonable adverse effects on public health and the environment, and because empirical studies and the governments' own data show that lethal predator control programs do little to protect the livestock industry; yet, lethal predator controls cost hundreds of millions of dollars each year. As we have demonstrated herein, the benefits of producing, distributing, and using these toxicants far outweigh the benefits that livestock producers might enjoy while using them. At risk is the health and safety of the public, of pets, and of species – particularly species of special concern.

As we have discussed herein, economically viable non-lethal alternatives are available to livestock growers such as guard animals, protective housing (i.e. pens and sheds), immediately removing livestock carcasses to avoid habituation, and the usage of electronic devices (i.e. strobes and sirens). Good husbandry practices such as concentrating flocks in small areas, and having humans around during the lambing and calving season can greatly reduce the risk of predation. But more important, the risk of predation is inherently miniscule—less than one percent for cattle and approximately three percent for sheep. Berger (2006) compared Eastern and Western sheep operations and found, using 60 years of data, that livestock growers suffered primarily from hay prices, labor costs, the value of lambs—but not from predation by carnivores.

While predators are known to kill and eat wild prey, WS kills many native carnivores in misguided attempts to bolster wild prey populations. Studies show that predator-prey relationships are complicated by a myriad of factors such as habitat loss, lack of nutrition because of drought, too much snow, or competition with native livestock etc. Killing predators only benefits prey populations if those prey are below their carrying capacity. Not the stuff of intuition, but these facts have been revealed through empirical study.

In FY04, APHIS-WS killed over 100,000 mammalian carnivores using the "sledge hammer approach" – but killed only 12% of carnivores by sodium cyanide, and only 0.04% by Compound 1080. Therefore, this limited use shows that these toxicants are not necessary or even vital to their operations. Yet, the risk of stockpiling and using these toxicants pose an enormous risk to the public. The accidental poisoning of threatened or endangered species is also unacceptable because it could jeopardize populations. So when the Administrator balances out the risk to wildlife, people, and to pets, the Administrator must conclude the risk is too great. part of  
- 016

In 1994 when the EPA decided to allow the usage of M-44s, it could not have known the amount of inadvertent deaths it would cause. Since that time, M-44s have killed numerous non-target species by the thousands. Some of the species were threatened and endangered, some were people's pets, and people too (Amanda Woods, and potentially Paul Wright, and his then three-year old daughter (supra)).

APHIS cannot account for its handling of the substance:

- They pose a very real bioterrorism threat—the USDA OIG found them lacking in basic accountability when it comes to handling, storage, and access by unauthorized persons;
- APHIS has poisoned many dogs and indirectly harmed at least three people (supra). Two dogs died in Utah in Spring 2006; and see - 010 and - 011
- They jeopardize threatened and endangered species, and species of special concern (supra).
- The EPA should reconsult with the FWS because of the imminent harm posed by these toxicants which has violated the prohibition of take of threatened or endangered species under the ESA.

For the reasons we have raised in this petition, the EPA should immediately suspend and ultimately ban the usage of sodium cyanide and sodium fluoroacetate used for predator controls.

### 13. REQUEST FOR RELIEF

Sinapu et al. request that the EPA:

- (1) Determine that sodium cyanide and sodium fluoroacetate when used for lethal predator control causes unreasonable adverse effects on public health, the

environment, and to species' populations (including those that are threatened or endangered);

(2) Determine that sodium cyanide and sodium fluoroacetate present an imminent hazard to public health and the environment because the unreasonable adverse effects resulting from their continued use cannot be avoided within the time necessary for cancellation hearings;

(3) Issue a Notice of Intent to Cancel the registration of all pesticide products used for predator control that contain sodium cyanide or sodium fluoroacetate;

(4) Immediately suspend the registrations of all pesticide products used for predator control that contain sodium cyanide and sodium fluoroacetate;

(5) Move as expeditiously as possible to complete the cancellation of all pesticide products used for predator control that contain sodium cyanide and sodium fluoroacetate;

(6) Pursuant to the ESA, reconsult with the FWS so that more threatened and endangered species are not harmed.

Respectfully submitted January 24, 2007, by



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MAMMALIAN CARNIVORES KILLED BY USDA-APHIS-WILDLIFE SERVICES, FISCAL YEAR 2004															Table 1		
	Trap - 39%					Hunt - 40%				Poison - 11%	Other - 3%	Dog	Selectivity			Total	
	Cage	Kill	Leghold	Leg-Snare	Neck-Snare	Aerial Gunning	Spot	Call	Shot	M-44	LPC/1080		Denning	Intended	Unintended	Non-Target	
Badgers	4	8	221		179		3		27	3				253	8	184	445
Bears, Black	101		5	182	14		2	3	31			59		393	1	3	397
Bobcats	84	2	842	2	499	292	8	81	38	5		65		1,876	13	29	1,918
Coyotes	8	1	6,486	260	11,883	32,408	285	6,562	3,998	10,630	45	1,730	1,378	75,622	9	43	75,674
Dogs	12		63	4	138		4	8	172	117		380		379	25	115	519
Foxes, Arctic		2	118						16				9	145			145
Foxes, Gray	89		815		356	1	4	98	29	277		15	8	1,523	53	116	1,692
Foxes, Kit			3		8					29					1	39	40
Foxes, Red	20	4	422		473	155	38	53	203	387		99	155	1,875	15	119	2,009
Foxes, Swift			2							19						21	21
Mountain Lions	26		33	22	38				19			221		353	5	1	359
Otters, River	1	449	23		20		3							28	82	386	496
Raccoons	4,817	677	2,568		1,213		400	31	311	291		210		9,445	353	720	10,518
Ringtails			8							1		1		1		9	10
Skunks, Hog-nosed	1	2												1	2		3
Skunks, Hooded		15												15			15
Skunks, Spotted	8		9											8		9	17
Skunks, Striped	5,161	55	483		138		272	1	410	113		122	1	6,419	151	186	6,756
Wolves, Gray			110		12	60		4	2			2		190			190
Wolves, Mexican									1					1			1
TOTAL CARNIVORES	10,332	1,215	12,211	470	14,971	32,916	1,019	6,841	5,257	11,872	45	2,780	1,551	98,527	718	1,980	101,225
NON-CARNIVORES KILLED WITH M-44's BY USDA-APHIS-WS (FY04)																	
Hogs										4							
Marmots										1							
Opossums										96							
Ravens										7							
TOTAL M-44's										11,980							

Table 1



## Cattle Production & Deaths for 2005

Data From  
USDA NASS (2006) Cattle Death Loss & USDA NASS (2005) Cattle Inventory

Figure 1

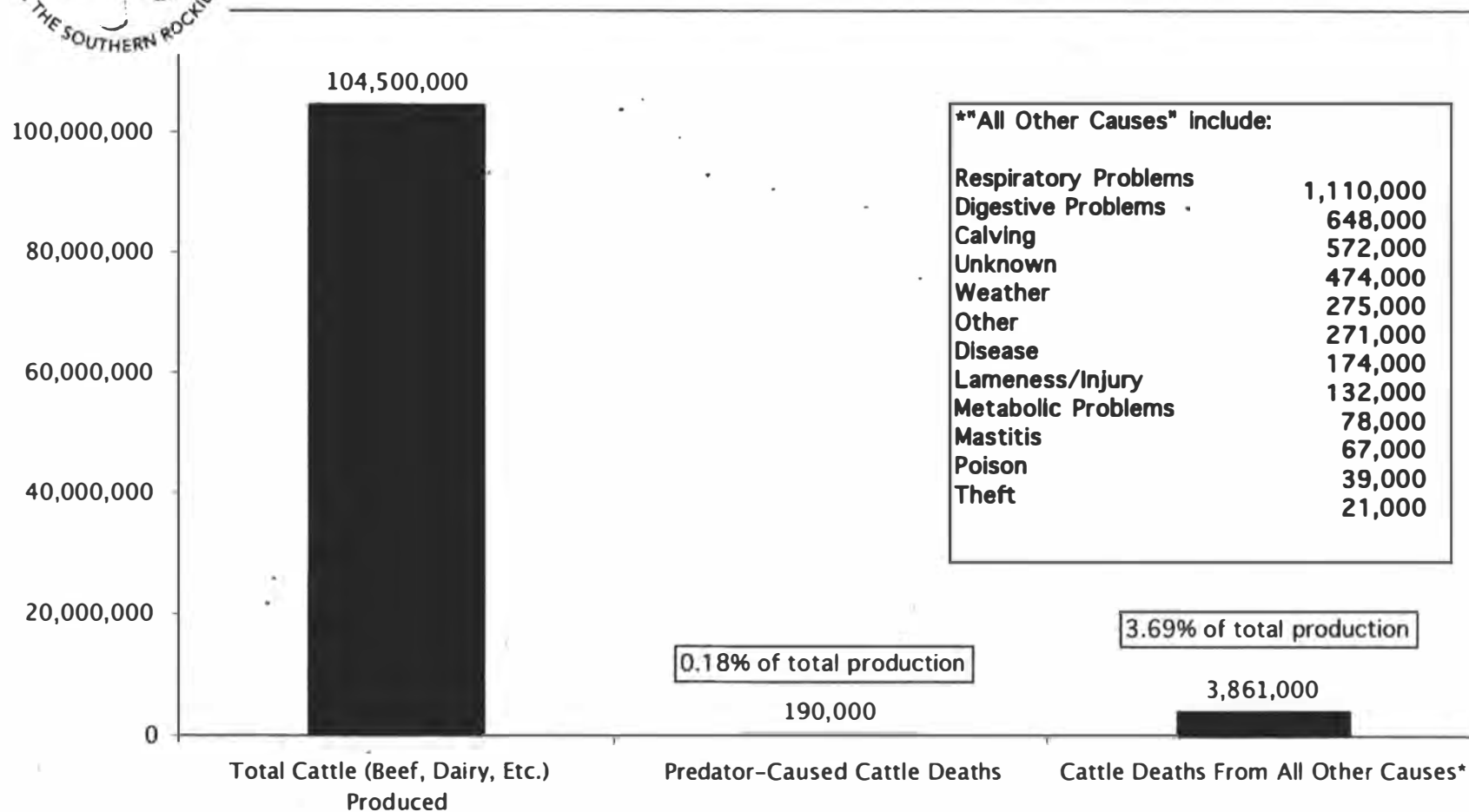


Figure 1

## Mammalian Carnivores that Killed Cattle

Data From USDA NASS (2006) Cattle Death Loss

In 2005, 104,500,000 cattle produced in U.S. Mammalian carnivores killed 190,000 cattle, or 0.18% of the total production.

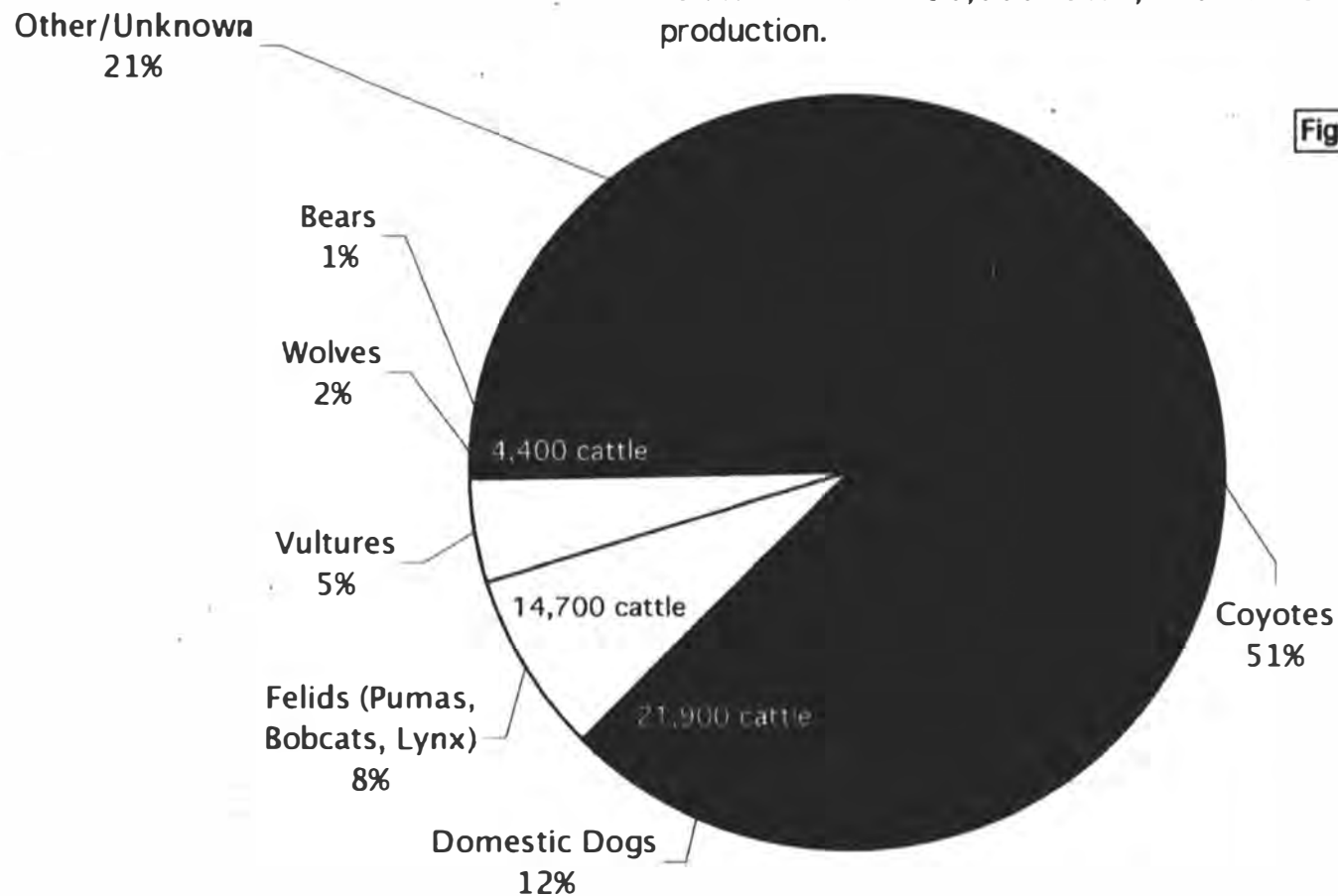


Figure 2

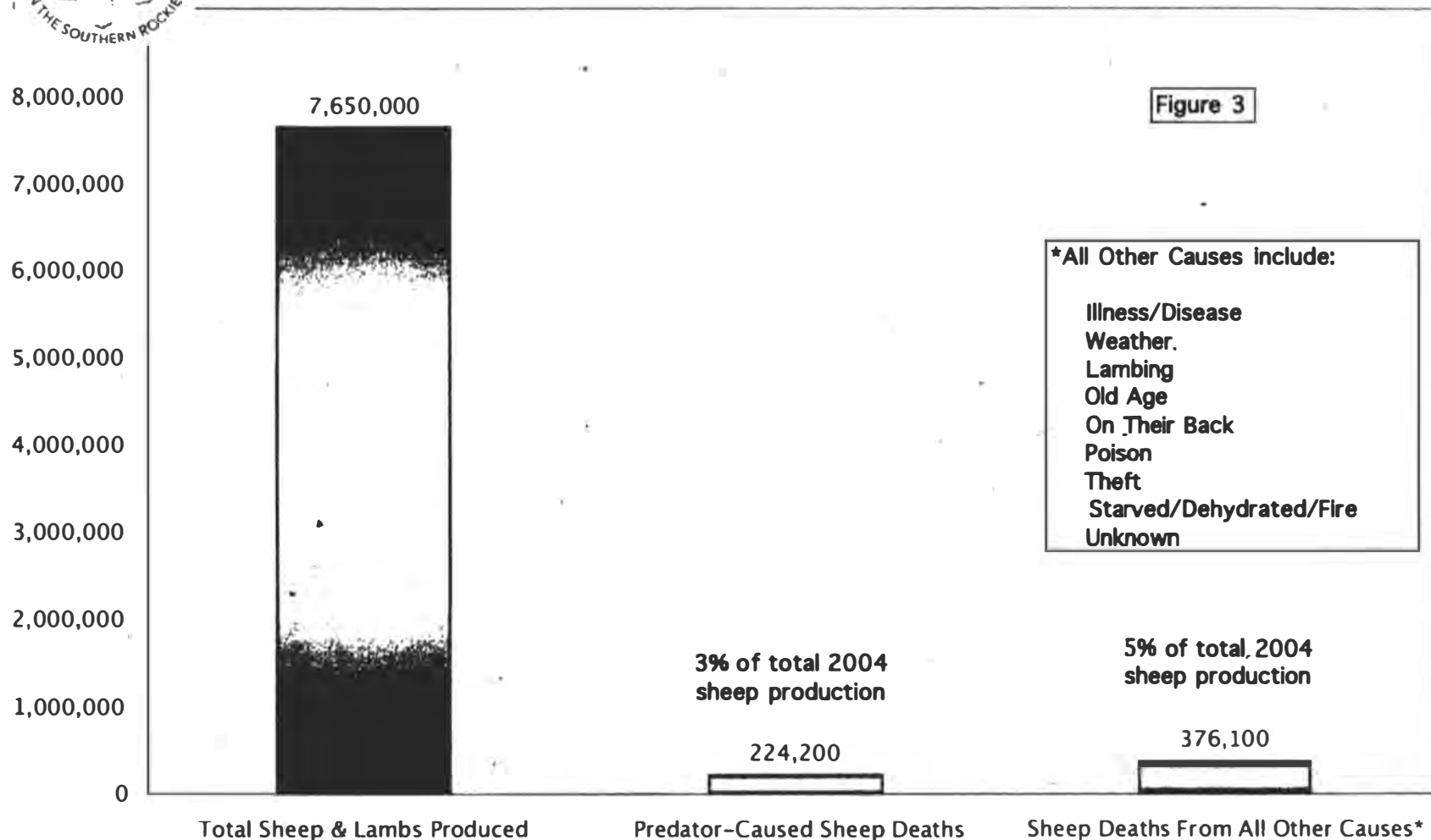






## Total Sheep & Lamb Production vs. Deaths (2004 data)

Data From: USDA NASS (2005) "Sheep & Goats Death Loss" & USDA NASS (2005) "Sheep"



**Figure 3**



Figure 4

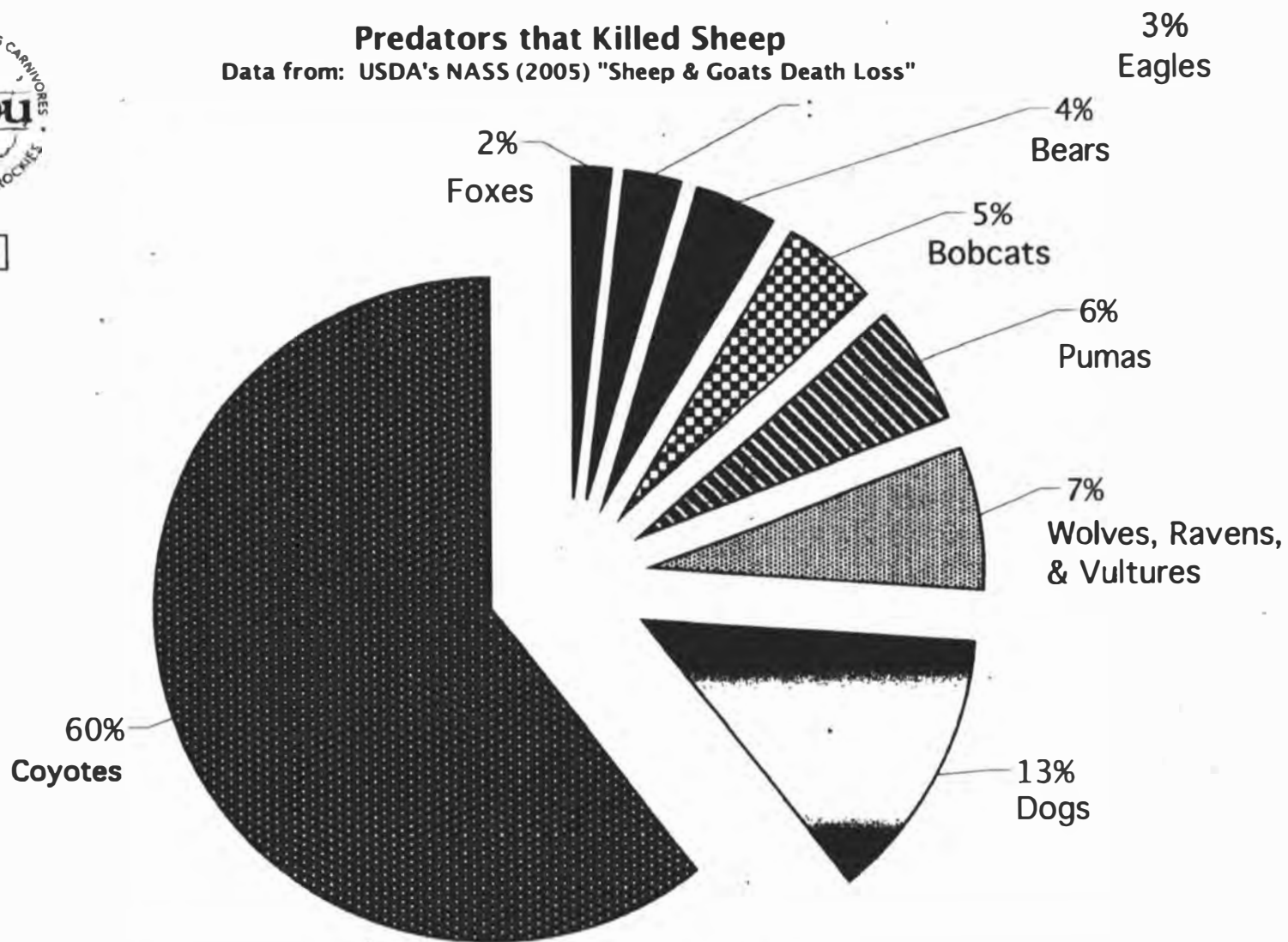


Figure 4

part of -001



# Montana Fish, Wildlife & Parks

*Living with Predators Project: Working Paper -0004*

**Preliminary Overview of Grizzly Bear Management and  
Mortality 1998-2005  
Region 2 Montana Fish, Wildlife and Parks**

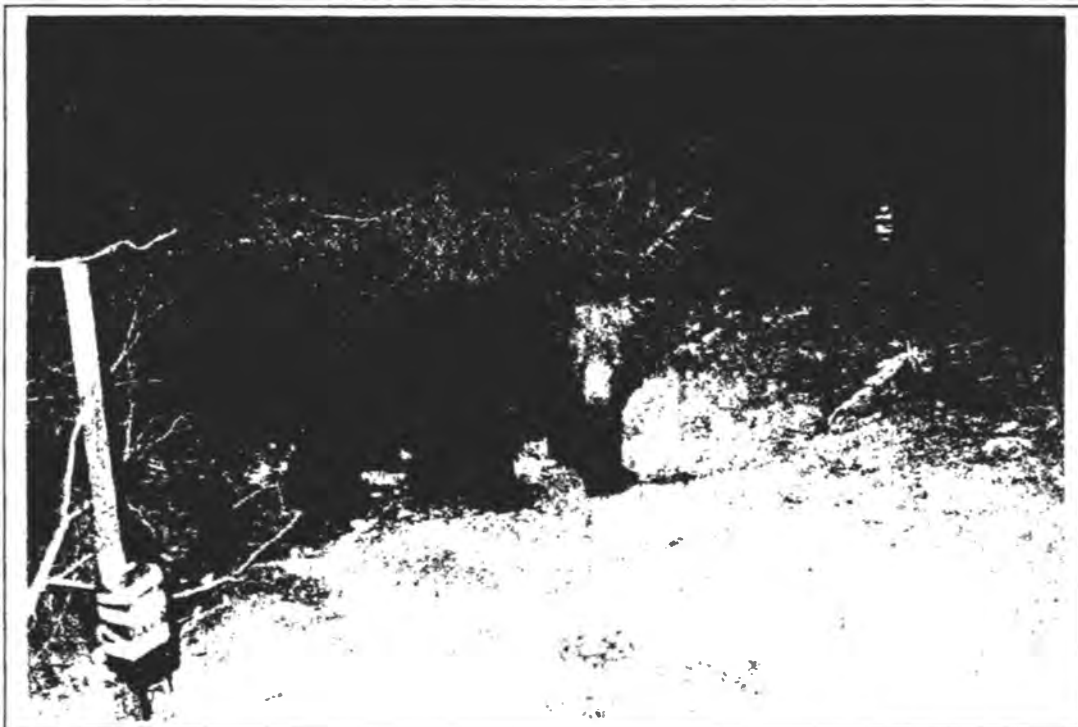


Photo by D. Denny

**Region 2 Preliminary Report  
Prepared by:  
James Jason Jonkel  
Grizzly Bear Management Specialist  
March 2006**

**Exhibit 1**

55

several occasions as far south as Mount Roberts on the South Fork of the Dearborn River. A sheepherder near Lincoln, MT killed F-25 illegally in July 1998 (Figure 22.)

part of IO20372  
-001

#### **Grizzly Bear M-26**

In August of 1998, the carcass of an adult male grizzly was discovered southwest of Helmville, MT. It appeared that the bear had died that spring or the previous fall from poisoning by a cyanide gun set by Wildlife Services for coyotes.

#### **Grizzly Bear UK-27**

In November 2001 FWP received a report that a hunter had shot a grizzly in self-defense northeast of Ovando, MT. An investigation determined that the bear had been surprised by the hunter's partner and when fleeing encountered the hunter. After being shot, the bear fell, rolled and then ran off. For several days FWP tracked the bear with hounds and Karelian bear dogs. The tracking conditions were poor, and the bear was never found. While searching for the bear, FWP located one poached mule deer, a lion-killed elk and dead white-tailed deer. It can be theorized that the bear was feeding on the carcasses when surprised by the hunters. Although no carcass was located, the hunter felt that he had shot the bear in the chest and lungs. The bear is presumed to be dead.

#### **Grizzly Bear UK-28**

From September to November 2002, FWP was able to piece together the movements of an unmarked grizzly bear that ranged from the Rock Creek Drainage to the Bitterroot Valley. In mid September, a rancher in Rock Creek reported finding several cached livestock carcasses. Upon investigation, Wildlife Services determined that the calves had died of natural causes and that they had been cached by a grizzly bear. Shortly thereafter, bow hunters sighted a grizzly and on September 23 the bear was videotaped by FWP on a moose carcass. Over the next two weeks the bear was reported on multiple occasions in and around the Willoughby Creek area southeast of Stevensville, MT. The tracks and sightings were verified by FWP (Figure 23.) When the bear started getting into garbage FWP set traps. The bear was not captured and no reports of UK-28 have come in since November 2002. In the fall of 2003 there was a rumor that a grizzly had been

part of -003

Amanda Wood Kingsley  
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Port Townsend, WA. 98368

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e-mail: [kingsley@olympus.net](mailto:kingsley@olympus.net)

11/15/03

To Whom It May Concern,

I'm writing this letter in support of Predator Defense, and to express my gratitude for the help they gave us when there was no other help to be found.

In the fall of 1994 my husband and I were walking our dog across my family farm in the Willamette Valley when she (the dog) discovered a cyanide trap placed there by "Animal Damage Control". We had never been notified that the poison traps were on our property. Ruby was a large, strong dog; it took 15 minutes of her screaming and thrashing in the mud before she died.

In the process of desperately trying to figure out what the hell was happening and trying to save her I also inhaled some cyanide gas and my hand was lacerated by her teeth. (Her mouth was full of cyanide). By the time we were able to get to a phone-booth and talk to an emergency poison specialist they said I was lucky to be alive.

The whole event left me dealing with many months of anxiety attacks and what turned out to be Post Traumatic Stress Syndrome.

In the year following the poisoning of our dog I mounted the best protest I could, writing to the ADC and every politician I could think of.

Thanks (no thanks) to the incredible lobbying power of the ADC and the ranching industry my letters and protests fell on deaf ears. It was extremely disillusioning. If it weren't for the help of the Predator Defense people I don't know what we would have done. They were the only corner of support we found and seem to be the only outfit with the guts to fight a powerful, corrupt, and dangerous operation. Without the PD's continuing efforts I hate to think where we would all be. Without their perseverance and determination I think the west would be a much scarier place laced with who knows what variety of toxins and poisons working their way into our ground water and the food-chain and endangering the public. My dealings with the ADC (and the politicians that work for them) proved them to be an arrogant and extremely short-sighted agency experimenting with dangerous chemicals at the risk of many. For decades the ADC has operated with almost complete impunity, which means they don't have to be smart or careful in what they do, and they aren't. In placing the poison traps on my property the ADC broke numerous regulations: they put the trap beside a stream, there were no warning signs at the nearest property entrance, no effort made to notify the family living in the house nearby, and the warning signs on the trap were completely obscured by thick brush and grass. In response to my complaints the ADC simply denied each and every violation and it came down to my word against theirs.

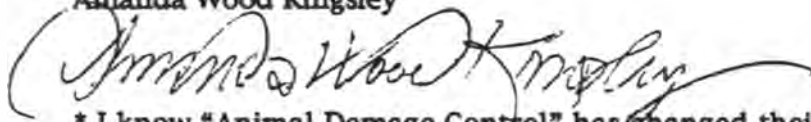
Most studies show that the ADC's cyanide coyote traps are ineffective at best and unquestionably dangerous. I know the ADC has lobbied to introduce much more dangerous poisons but have been stopped by Predator Defense and other similar agencies in other parts of the country.

Predator Defense seems to be the only group in the region that's watch-dogging the ADC or insisting on accountability for their continuing "accidents" and violations.

From my own experience I know what an enormous and daunting battle this will continue to be. Predator Defense has my undying support and gratitude for their guts and determination in taking on a very nasty Goliath. I greatly hope they will get the support they need to continue this fight for the sake of all of us.

Sincerely,

Amanda Wood Kingsley

A handwritten signature in cursive script, reading "Amanda Wood Kingsley". The signature is written in dark ink and is positioned below the printed name.

\* I know "Animal Damage Control" has changed their name, but I can't remember their latest misnomer.

part of - 004

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

JOHN DOE #1, JOHN DOE #2, JOHN  
DOE #3, for and on behalf of  
themselves and a Class of Others  
Similarly Situated; THE TEXAS  
FARM BUREAU; and THE AMERICAN  
FARM BUREAU FEDERATION,

Plaintiffs,

vs.

CIVIL ACTION NO. W 99-CA-335

ANN M. VENEMAN, in her official  
capacity as Secretary of the  
UNITED STATES DEPARTMENT OF  
AGRICULTURE; WILDLIFE SERVICES;  
ANIMAL AND PLANT HEALTH  
INSPECTION SERVICE; and THE  
UNITED STATES DEPARTMENT OF  
AGRICULTURE,

Defendants.

ANIMAL PROTECTION INSTITUTE,

Defendant-intervenor.

TO OF PAUL WRIGHT

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447 -

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part of -004

1. My name is Paul Wright. I live in Crawford, Colorado.

2. I was a Plaintiff in Wright v. U.S., 00-CS-217 (D.Colo. 2001). That was a case under the Federal Torts Claim Act because Wildlife Services illegally trespassed onto my small family farm and placed an M-44 cyanide ejector which killed my dog, poisoned me and could have killed my then three year old daughter, Meaghan Wright.

3. More specifically, Edna Wright, who is my grandmother, lives at 3762 Highway 92 near Crawford, Colorado. My family refers to this piece of land as "Grandma's Place." Grandma's Place is approximately 80 acres and includes Edna's home, several other buildings, pastures where horses graze and fields where my wife, Lee-Ann Wright grows garlic.

4. I had a dog named Bob for 7 years. Bob was a boxer/golden retriever mix. As I travel a lot for my job as a truck driver for Pepsi, Bob was the protector of the family. For example, there were mountain lions in the area of our home. Bob provided a sufficient deterrent to the mountain lions to allow Meaghan, and my other daughters Shienne and Halene to play outside. I also used to take Bob hunting with me.

5. On or about February 15, 1999 I was walking on Larry Jensen's property. Mr. Jensen is the neighbor of Grandma's Place. I was legally on the Jensen's property as I have a right to be on Mr. Jensen's property in order to maintain the Wright's irrigation ditch which is on the Jensen property. At that time, I had no knowledge of Wildlife Services or M-44 sodium cyanide devices. An M-44 is a device designed to kill predators. It looks similar to a tent stake. It is baited with meat on the top and when an animal or human pulls on the baited top, a spring ejects sodium cyanide, which is intended to go into the mouth of the predator and kill the predator.



6. While walking on the Jensen property, I saw an object that resembled a tent stake. I later learned that the object was a M-44. The M-44 was approximately 15 feet from the main irrigation ditch and was actually sitting in a pool of water that was overflow from the irrigation ditch. However, the M-44 was above the water. The placement of this M-44 was a violation of EPA Use Restriction 12 (No M-44s within 200 feet of body of water). EPA Use Restrictions are conditions placed on the use of pesticides which the U.S. Environmental Protection Agency imposes pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Furthermore, there were no warning signs on the entrance to the Jensen property in violation of EPA Use Restriction 23. (Warning Signs Required). Moreover, Wildlife Services had not notified local medical people of its intent to use the M-44s in violation of EPA Use Restriction 25 (Local medical people must be notified). The placement of this M-44 was also in an area where exposure to family and pets was probable in violation of EPA Use Restriction 8(2) (No placement where exposure to public, family, and pets is probable).

7. I originally thought the M-44 was a survey marker. I picked up the M-44 and observed that it was a "waxy-wood thing." Based on what I has subsequently learned, the M-44 was loaded. The M-44 could have killed me. I put the M-44 back and continued on my way.

8. Shortly thereafter, I saw a red and white sign that said it was dangerous. The sign was the size of a postcard and had apparently been placed on a willow tree branch. However, the willow branch had apparently broken off and was lying on the ground. I walked on and did not tell anyone about the incident. Based on the sign, I mistakenly thought that someone on the Jensen's property was trying to kill muskrats.

9. On or about March 1, 1999, on my way home from work I ran into Mr. Jensen. Mr. Jensen and I talked about a neighbor below who was being flooded out by my irrigation

ditch. This was because Mr. Jensen was having water dropped down my irrigation ditch to provide water for his cattle. Mr. Jensen and I went in Mr. Jensen's truck to investigate the water issue. Mr. Jensen and I walked on my property to investigate the problem. While we were walking I saw a dead coyote. Mr. Jensen said "we are poisoning coyotes because they killed calves." Mr. Jensen did not explain who was poisoning the coyotes or what method they were using. During this trip, I did not see any warning signs about M-44s.

10. Edna Wright was also unaware of the placement of M-44s on or near her property until the day after Bob, our dog, was killed. Nor was Edna ever contacted about WS' placement of M-44s on her property.

11. On or about March 2, 1999, I came home from work. I loaded up Lee-Ann, Meghan, Shlaine and Helena in the family van to go have dinner at Edna's house. We arrived at Grandma's at around 4 p.m. I then proceeded to go to the North Side of Grandma's property to do work on the irrigation ditch. Meghan, who was only three years old at the time, and Bob accompanied me. I dug out a pipe and then headed back to the van. While clearly standing on Grandma's Place, I called for Bob to come and Bob did not respond. Eventually Bob responded and Meghan. Bob and I got in the family van and drove to the South side of Grandma's Place so that I could continue my ditch work.

12. We parked the van in the small triangle of land that is owned by the Bureau of Land Management (BLM) and is adjacent to both the Jensen's property and Grandma's Place. Meghan, Bob and I entered Grandma's Place. There were no warning signs on the entrance to Grandma's place in violation of EPA Use Restriction 23a. While on Grandma's Place, we saw a dead coyote. The dead coyote was sitting in water. Meghan asked me, "why is the doggie dead?" I told Meghan that the coyote had been poisoned. I grabbed the dead coyote and

attempted to throw it onto the Jensen's property. While picking up the coyote's legs, I called my dog Bob. At that time, Bob was rolling in horse manure on Grandma's Place. Bob looked up into my eyes and then took off running. At the same time, there was a puff of what appeared to be dust. In fact, it was deadly sodium cyanide as Bob had just set off an M-44 that WS had illegally placed on Grandma's place. Bob was approximately 30 feet away from 3 year old Meaghan and myself at the time he set off the M-44. Bob continued to run away from Meaghan and I until he stopped to vomit. After Bob vomited, he stiffened, stood up on his hind legs and then keeled over.

19. I immediately thought that Bob had earlier been poisoned by strychnine and that it had just taken effect. I swooped up Meaghan into my arms and ran towards Bob to aid him. Upon arriving by Bob's side, I picked up Bob. At this point little Meaghan was crying and asked me where we were going. I explained to Meaghan that we had to take Bob to the Doctor. As they were heading back to the van, I began to cry. Although crying herself, Meaghan told me not to cry. In an effort to save time, while carrying Meaghan and Bob, I tried to jump the fence that separated us from the van. I hit the fence and Meaghan, Bob and I all fell. I once again scooped up Meaghan and Bob and got in the van.

20. I headed for Dr. Clinton Cotton, the veterinarian in Hotchkiss, Colorado. In the van ride to the see Dr. Cotton, I heard Bob gasping for breath. Upon arriving at Dr. Cotton's office, Dr. Cotton asked me what had happened. I said that Bob had been poisoned with strychnine. Dr. Cotton cut open Bob's throat in a futile effort to save him. Despite my prayers for Bob's life, Bob died.

21. Dr. Cotton and I then discussed different poisons. Dr. Cotton explained to me that it was probably a sodium cyanide M-44 that killed Bob. Dr. Cotton confided in me that because of the M-44s, he was worried about seeing a lot of dead dogs.

22. On the way back to Grandma's, Meghan told me that next time she would not go with me, next time she would stay with Mommy. This indicated that Meghan was blaming herself for Bob's death and was suffering the related psychological damage.

23. I was not able to discuss the incident. I also inappropriately blamed myself. I was in shock over the incident. I never expected that anything on his family's land would kill Bob.

24. Lee-Ann explained death to Meghan. We had a funeral for Bob and the kids still say "Hi" to Bob's headstone. Halena wrote a touching letter to her teacher as a way of expressing her grief. After the incident, Halena has been scared to go outside alone after dark. In addition, Halena has been forced into a horribly awkward position because Gary Hanson, the WS employee who illegally placed the M44s on Grandma's Place, is married to Halena's school teacher.

25. Lee-Ann also spoke to Dr. Cotton on the telephone. Dr. Cotton told her that it might have been an M-44 that killed Bob. After I arrived back home, Lee-Ann telephoned the Sheriff's Department about the incident. The Sheriff's Department told Lee-Ann that they were not going to do anything because they did not want to put their people in jeopardy because they were unfamiliar with M-44s. Lee-Ann then reported a trespass to the Sheriff's Department. However, the Sheriff's Department told Lee-Ann that the incident had been reported to David Moreno, Grand Junction District Supervisor of WS. Therefore, the Sheriff's Department believed it was out of their hands.



30. Sometime on March 4, 1999 or March 5, 1999 an employee of WS ~~trespassed~~ a second time on Grandma's property. This is particularly troubling for two reasons. One is that on March 4, 1999 Lee-Ann explicitly told David Moreno that she did not want WS employees going on Grandma's property without her being present. The second reason this trespass is particularly troubling is that the purpose of the trespass was to secretly remove at least two M-44s: the one that killed Bob and the other one that was part of the double set. This makes it appear that Mr. Moreno and WS were trying to cover-up evidence.

31. Later, on March 4 or 5, 1999, Lee-Ann telephoned Mr. Moreno. Mr. Moreno and Mr. Hanson came by the our home. Mr. Hanson hugged Helena and asked if she could ever forgive him for killing her dog. Mr. Moreno changed his story and claimed he never agreed with Lee-Ann that he would go with her to remove the M44s. Even if this was true, which it is not, Mr. Moreno and any other WS employee would still have been trespassing when they went to remove the M-44s. Mr. Moreno talked about "~~extremists~~" that ~~endanger~~ WS' existence in an apparent attempt to justify his unlawful actions.

32. Lee-Ann asked if WS could take certain steps to make sure that WS did not kill other dogs, or children! Mr. Moreno said that he could not take these steps. Mr. Hanson said it was a terrible mistake and offered Lee-Ann a dog. Lee-Ann refused this offer, as she was more concerned about protecting her children's lives than being bought off.

33. On March 22, 1999, Mr. Moreno sent me a Standard Form 95. In the cover letter, Mr. Moreno apologized again for the death of Bob.

34. I have come to learn our case is far from an isolated incident. In 1996, an ADC trapper placed an M-44 on Amanda Wood's property in Oregon and killed her dog. Ms. Wood was also exposed and suffered symptoms of cyanide poisoning.

probably  
Same as  
1994  
case  
-003

part of 007

35. On January 10, 2000, WS killed another dog with an M44 in Oregon.

36. WS killed another dog in Southeast Colorado earlier this year.

37. This is not a new problem. The problem of WS harming innocent people with M-44s has been going on for nearly half a century. See Worley v. US, 119 F. Supp. 719 (D.Or. 1952).

38. In the Spring of the year after WS killed my dog and nearly killed my daughter and myself, I had to return to the Jensen's property to work on my irrigation ditch. However, I wanted to know if WS had placed any M-44 near the area that I was going to be working.

39. I am not an animal rights terrorist. In fact, I hunt, fish, eat meat, wear leather, own work animals and otherwise engage in normal activities. I did not want to know the location of the M-44s to commit any terrorist acts or make any political statements. I simply wanted to know where the M-44s were so I could protect my family and myself from being poisoned.

40. My lawyer, Jeffery Kodish, submitted a Freedom of Information Act (FOIA) request to WS to find out the location of the M-44s near my property.

41. WS responded by letter that because of the "expanded and preliminary injunction order issued on February 9, 2000, by the U.S. District Court for the Western District of Texas in civil action (W99CA335) brought against the USDA Animal Plant Health Inspection Service by the Texas Farm Bureau and the American Farm Bureau Federation, the agency can neither confirm nor deny the existence of such records."

42. To be fair, my attorney did eventually find out that as of March 6, 2000, there were no M-44s placed on the Jensen property adjacent to my family's farm. However, my attorney only was able to get this information after threatening the Assistant U.S. Attorney handling my

Federal Tort Claim Act (FTCA) case with having to seek a temporary restraining order. The delay in being able to safely go to work on my irrigation ditch caused significant disruption in my farm work.

43. WS continued to use the preliminary injunction in this case as an excuse to block discovery in my FTCA. This caused needless delay and expense for my family in my FTCA case.

44. WS eventually settled my FTCA case for \$9,500 but that was only after discovery was completed, summary judgment motions were decided and the case was a few weeks away from trial.

45. In conclusion, I think that the preliminary injunction in this case is endangering the lives and well-being of people, including farmers and their children and pets. I think WS is also using the preliminary injunction as an excuse to avoid public scrutiny of WS's mistakes.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

  
Neil Wright

9-19-04  
Date

(68)



part of -007

Continued from Page B1

liver deadly powder to a buzzing animal's skin and eyes. The capsules are most commonly used in pastures where sheep graze.

Of the estimated 150,000 coyotes in Oregon, about 5,000 to 6,000 are killed in this way each year, said Rod Kitchner, assistant state director for the Agriculture Department's Animal Plant Health Inspection Service in Oregon. It's rare for dogs to be killed instead, he said.

"It's a real good tool that's pretty selective to coyotes and canines," he said. "That's why we have heard laws in this state — to protect dogs."

But Brooks Paly, executive director of the Predator Defense Institute, said dog deaths from poison traps are not rare. "It's happening in Oregon all the time," he said.

Even before the incident in Escalante, Paly said, his Predator Defense wildlife advocacy group was at work on a plan calling for a nationwide ban of M44.

Sally Maccher, representing a group called Protect Pets and Wildlife, said that what happened in Escalante proved the need for a citizen initiative banning not only the use of M44 but also what she called "body-gripping" traps. The group must collect 66,768 signatures by July 7 to put the initiative on the November ballot.

Fahy, of the Predator Defense Institute, accused government agents of failing to follow federal law in the Escalante case. Regulations prohibit the use of M44 near public roads or paths and in areas frequented by people and pets. Regulations also require warning signs in English and Spanish near the traps.

Lytle said he followed the rules. The Christmas tree farm, about 40

acres, was considered a secluded area. In addition to "no trespassing" signs, Lytle said, there were 12 signs warning in English and Spanish of the traps set around the property. The sign nearest the M44 that killed the dog was missing, he said.

Dede Tippett said she saw only one sign during her search for Bud. A neighbor, Tyler Ventronekamp, said he saw no signs. Ventronekamp, 13, said he and his friends go into the area almost every weekend to fish and follow deer trails. Other people go there, too, he said.

Ventronekamp said he did see the coyote traps. "I didn't know what they were," he said, "so I just let them alone."

than a film canister and contain dollops of cyanide activated by a spring when animals investigate the scent.

Mark Lytle, a wildlife specialist with the U.S. Department of Agriculture's Wildlife Services division, had put them in place Wednesday. The owner of the Christmas tree farm had sought help after coyotes killed ducks, geese and cats and threatened cows and horses nearby, he said. Other neighbors had also complained about the coyotes.

For at least 30 years, federal officials have put out M44 traps triggered to de-

week and residents expressed concern that other pets and even children were at risk.

"This is bad stuff. It shouldn't be allowed," said Dede Tippett, whose 4-year-old dog, Bud, disappeared late Thursday night. Family members found Bud early Friday morning. He died on the tree farm, about 100 yards from their back door.

The dog was killed by a capsule of sodium cyanide laced with a scent intended to draw coyotes. The scent is also irresistible to dogs. The capsules,

Exhibit 4

part of -007

# Metro/NW

TUESDAY ♦ JANUARY 11, 2000

## Neighbor dog's death halts attempt to trap coyotes on Estacada tree farm

The poisoning of a pet causes federal officials to remove cyanide canisters, which are under attack by several groups

By MICHELLE COLE  
and LISA GRACE LEDNER  
THE OREGONIAN

ESTACADA — Federal agents removed ten coyote traps from a Christmas tree farm Monday morning after a German shepherd was poisoned. The German shepherd was

69

part of

-009

Brooks - FYI

**COPY**

37819 Alexander Road  
Philomath OR 97370  
541-929-5267 (home)  
541-737-6416 (work)  
greenmtn@peak.org

February 18, 2002

Peter DeFazio,  
151 West 7th, Suite 400  
Eugene, OR 97401

Dear Congressman DeFazio,

I write to you seeking the introduction of legislation to narrow the scope of USDA's Animal and Plant Health Inspection Service Wildlife Services (WS) to non-lethal methods of predator control, thereby discontinuing, among other approaches, the use of sodium cyanide devices (M-44s). I am aware that this is an area that you have been active in and one in which you would like to see change.

My beloved shepherd, Oberon, was killed on February 4, 2002, by an M-44 sodium cyanide device set out by WS staff at the request of a neighboring rancher who had lost one calf (out of a herd of at least 100) the week before, presumably to coyotes, on property adjacent to mine. For the record, the WS employee's name is Jim Schacht. It is my understanding that his "work" has generated a number of past and current tort claims and at least one legal suit.

Oberon did not die immediately but after eight hours, during which the local emergency veterinarian clinic worked to turn this nightmare around. Unfortunately, Oberon received a lethal dose. Knowing what I do now about the neurological effects of sodium cyanide poisoning, Oberon likely would have suffered permanent brain damage even if he had been able to survive the immediate effects of the poison. That he was probably better off dying offers no consolation.

Oberon is not coming back, but other killings can be prevented. I have spent innumerable hours since February 4 assembling the factual details that led to Oberon's death. I have also spent considerable time learning about the principles and rules under which WS operates. I believe I could demonstrate that the agency failed to follow its own guidelines in this case. Examples include the low threshold (one calf) that triggered a lethal control approach, the fact that other strategies, such as repairing the fence under which the coyotes presumably were going under, were not first employed, and the fact that sodium cyanide is prohibited in "any areas where exposure to the public and family pets is probable" (M-44 Use Restrictions, USDA) (I happen to live next door).

At this time I am more interested in the broader result of narrowing the agency's "management" options than in pursuing specific redress. I am also reticent to pursue legal action for the other reason that such a course would inevitably point to the culpability of people who are—and will continue to be—neighbors.

DeFazio  
February 18, 2002  
Page 2

Finally, I do have one other major complaint about this horrible incident that I seek your assistance in. The WS employee who set the traps told us on February 5 that he would be submitting a report regarding the Oberon's killing to the agency headquarters in Portland. We have been in touch with the state office in Portland and have asked for a copy of the report. The Assistant Director of Oregon Wildlife Services has told us that the agency is prohibited from releasing this kind of information on the basis that it will breach the confidentiality of the parties involved. He said that to receive a copy we would need to file a petition for it under the Freedom of Information Act.

As you may know, a judge in Texas last year issued an injunction against Wildlife Services' release of the names of certain ranchers who had cooperative agreements with Wildlife Services in response to a request by the Humane Society of the United States. There are a number of elements that make the report of Oberon's death different from the Texas case. First, I am a private citizen seeking information about a very specific matter. Second, the sole reason that the report exists is to document a "non-target" death; it is not a blanket request for what were argued to be private contracts. I believe that the Texas injunction is being interpreted overbroadly as a way of preventing or at least forestalling and making more cumbersome the release of a report that WS knows very well reflects very poorly on itself and is extremely bad public relations. My sense is that the report will likely not jibe with my understanding of the facts and circumstances. Can you help me get this report?

I thank you very much for your attention. I enclose photos of our sweet and gentle friend Oberon whose shocking, preventable death has left me and my family devastated, revisiting a hundred what-ifs daily. Please let me know what else I can do.

Sincerely,



Danielle Clair

COPY

71



## ***Wolf Report***

# **USFWS law enforcement confirms member of Buffalo Ridge Pack deliberately poisoned with 1080.**

**1-22-2004, update 1-23-2004.**

---

Sodium monofluoroacetate --  
"compound 1080" is one of the  
nastiest poisons ever created. It  
is odorless, tasteless and  
colorless, and kills in a horrible  
way. A single teaspoonful could  
kill 100 people.

It was once used by ranchers  
with abandon and hundreds of  
thousands of wildlife were  
killed, many of them not  
predators of livestock. Livestock  
and dogs also died. In 1972  
President Nixon banned the use  
of 1080.

Livestock interests, however, did not give up and they got permission to inject it into "Livestock Protection Collars" worn by domestic sheep. When a coyote bites the sheep on the neck, it is poisoned. Wildlife supporters have always worried that the compound will find its way into illegal use (all use except livestock protection collars) is illegal.

There is also worry that it could be a terrible weapon of mass destruction used by terrorists against the American population, but the Bush Administration has refused to ban it. Cynics say it's because the value their ties to the livestock industry more than danger to the public.

Someone has used it illegally against Idaho wolves. Fortunately only one died, and the loss had little effect on the Buffalo Ridge Pack, a highly visible pack last spring that dened near Clayton, Idaho.

part of -017

It was reported last May that one member of the pack was dead

under suspicious circumstances.  
Today U.S. Fish and Wildlife  
Service Law Enforcement put  
out the news release below.

I have been unable to contact  
anyone today, but as of several  
months ago the Buffalo Ridge  
Pack was thriving on its summer  
and fall range.

## NEWS RELEASE-

OFFICE OF LAW ENFORCEMENT  
1387 S. Vinnell Way Boise, Idaho 83709  
208-378-5333 Fax 208-378-5339

January 16, 2004  
For Immediate Release  
Contact: Scott Kabasa, 208-378-5333

### GRAY WOLF POISONED NEAR CLAYTON, IDAHO

U.S. Fish and Wildlife Service law  
enforcement agents have recently  
confirmed poisoning as the cause of death  
of a gray wolf in Idaho,  
and are seeking information from the public  
to help solve the crime.

The collared wolf, known as B-143, was  
found to have been killed by  
a poison known as Compound 1080.  
The animal's carcass was found 6 miles  
northwest of Clayton, Idaho,  
in the Squaw Creek Drainage on May 18,  
2003.

Compound 1080 (sodium fluoroacetate) is  
a colorless, odorless,  
tasteless, water soluble, highly toxic  
chemical. The misuse of this

*update to  
IO 19079-008*

chemical is unlawful. This chemical can be ingested by livestock, family pets, hikers, and children and can result in death from respiratory failure, seizures and heart attack. Animals or small children are most susceptible to poisoning due to ingestion, but the substance's toxins can also enter animal or human bloodstreams through contact with abraded skin or wounds, or through the respiratory system if dust particles are inhaled.

"We are very interested in finding whoever is responsible for the crime. If anyone has information about the illegal killing of wolves, please contact the Service's law enforcement division. Callers may remain anonymous," said Scott Kabasa, a Special Agent in the Service's Boise field office.

The killing of an animal protected under the Endangered Species Act is punishable by a fine of up to \$100,000 and one year in jail. The Service is offering a reward of up to \$2,500 for information leading to an arrest or conviction of the person or persons responsible for the poisoning of wolves. Service law enforcement agents may be reached at (208) 378-5333.

## Update on 1-23-2004

I talked with Carter Niemeyer who manages wolves in Idaho for USFWS. He said he found the wolf, and the wolf (B143) "died a horrible

death." The wolf was found near a rock slide with its paws torn up from convulsions and teeth clenched, body rigid from convulsions.

Niemeyer said this is "an absolutely stupid way" for anti-wolfers to try to kill wolves because of the great danger to other animals and even people can be poisoned. Because the actual poison was not found, Niemeyer said that depending on the "vehicle" the poison was in (such as lard, a carcass, or whatever) there still might be a danger to people or animals, such as dogs, who visit the area where the carcass was found, which fortunately is not next to an improved road.

As far as the Buffalo Ridge pack itself goes, it currently has 5-7 members and has been seen on the winter range preying on wintering ungulates. My guess is they will probably den in or near the same area.



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Return To Maughan Wolf Report Page

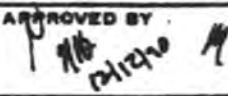
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Ralph Maughan PO Box 8264, Pocatello, ID 83209

DEPARTMENT OF THE INTERIOR  
U.S. FISH AND WILDLIFE SERVICE  
DIVISION OF LAW ENFORCEMENT

REPORT OF INVESTIGATION

<b>TITLE</b>  Wyoming Eagle Poisoning INV II RE: Randy GRAHAM  R-15	<b>DATE OF REPORT</b>  10/24/90	<b>FILE NO.</b>  INV 9982AK
	<b>INVESTIGATIVE PERIOD</b>  7/25/90 to 8/24/90	
	<b>REPORTING DISTRICT</b>  DN-6	<b>DISTRICT OF ORIGIN</b>  DN-6
<b>CHARACTER OF INVESTIGATION</b>  . EPA/ESA/MBTA	<b>REPORT MADE BY</b>  SA Bob Prieksat	<b>APPROVED BY</b> 
<b>REFERENCES</b>  R-9	<b>STATUS</b>  -P-	<b>COMPLEXITY (If no 3-300A to be submitted)</b>  15 hrs.

~~XXXXXXXXXX~~ SYNOPSIS

SYNOPSIS

GRAHAM told T-1 not to tell anyone about the fact that they probably killed a lion with the 1080 collars on [REDACTED] ranch. (b)(7)(C)

GRAHAM told T-1 to be real careful about becoming involved with people who wanted the T-1 to do all the dirty work.

T-1 told GRAHAM that Johnson County was disappointed about not being able to use the large 1080 collars. GRAHAM said the Department was stuck on that one because they didn't want to be the pesticide dealer for the collars.

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- ☒ SRA Bismarck 1
- ☒ SA McKenna 1

(Do not write in this space)

☒ DARD - Hartman (1)

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**SENSITIVE**

INV 9982AK

Date 10/24/90

NARRATIVE

DETAILS OF INVESTIGATION:

7/25/90 Taped Telephone Conversation Between GRAHAM and T-1:

On 7/25/90, T-1 called Randy GRAHAM at [REDACTED] The call was taped (RS-1-16A). GRAHAM provided the following information: (S)(C)(C)

GRAHAM told T-1 he had talked to his boss, Jim BEGELOW, and they were trying to find a way to allow full use of the large 1080 livestock protection collar. GRAHAM stated that MCBRIDE had called him to find out about using the large collars. GRAHAM said he told MCBRIDE there was a section under FIFRA where they might be able to reduce the concentration of 1080 and fill the large collars.

GRAHAM and T-1 discussed the 1080 collar program and the reports involved. GRAHAM told T-1 not to say anything about what they suspect they took at [REDACTED] to anyone. (This conversation was in reference to taking a mountain lion on KENNEDY'S ranch with the 1080 collars.)

8/24/90 Taped Telephone Conversation Between GRAHAM and T-1:

On 8/24/90, T-1 called Randy GRAHAM at [REDACTED] The call was taped (RS-1-17A.) GRAHAM provided the following information:

GRAHAM and T-1 discussed the report that was being prepared for publication on the 1080 livestock protection collar experimental program.

GRAHAM and T-1 discussed the large 1080 collars. T-1 said Johnson County was disappointed things didn't work out. GRAHAM said, "we were kind of stuck on that one. The Department didn't want to get into being the pesticide dealer as such." GRAHAM claimed MCBRIDE might provide materials if EPA would agree to allow them to reduce the concentration in the collar.

The T-1 told GRAHAM about contact with a rancher on doing bird work, but the rancher wanted T-1 to do all the dirty work. GRAHAM said you had to be real careful about getting into situations where you're doing it all.

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**SENSITIVE**



United States Department of the Interior  
FISH AND WILDLIFE SERVICE



IN REPLY REFER TO:

USFWS/LE  
MAIL STOP 69400  
INV: 9982AK

MAILING ADDRESS:

Post Office Box 25486  
Denver Federal Center  
Denver, Colorado 80223

STREET LOCATION:

134 Union Blvd.  
Lakewood, Colorado 80228

NOV 14 1990

Memorandum

To: Director, FWS, Washington, DC (D)

Through: Chief, Division of Law Enforcement  
Assistant Director, Refuges and Wildlife

From: Regional Director, FWS, Region 6

Subject: Request for Renewal of Class I Covert Investigation

ACTION:

Request renewal for a Class I Covert Investigation - INV 9982AK.

This investigation involves violations of the Eagle Protection Act; Endangered Species Act; Migratory Bird Treaty Act; and the Federal Insecticide, Fungicide, and Rodenticide Act.

*Robert B. Tuttle*

Attachment

Concur: *[Signature]* 11/21/90  
Chief, Division of Law Enforcement Date

Concur: *Rollin D. Agnew* 11/26/90  
*acting* Assistant Director, Refuges and Wildlife Date

Action: X 11/30/90  
Approved Disapproved Date

Signed: *Richard M. Smith*  
Director

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United States Department of the Interior  
FISH AND WILDLIFE SERVICE



IN REPLY REFER TO:

USFWS/LE  
MAIL STOP 69400  
INV: 9982AK

MAILING ADDRESS:

Post Office Box 25486  
Denver Federal Center  
Denver, Colorado 80225

STREET LOCATION:

134 Union Blvd.  
Laborers, Colorado 80238

Memorandum

To: Director, FWS, Washington, DC (D)  
From: Regional Director, FWS, Region 6  
Subject: Request for Renewal of a Class I Covert Investigation

As per your memorandum dated November 22, 1988, the following request for a renewal of a Class I Covert Investigation is being submitted.

Case Title: Wyoming Eagle Poisoning Investigation II - INV 9982AK

Case Agent: Special Agent Douglas McKenna, Salt Lake City, Utah

Class of Investigation: Class I

Requested Action: Approval for Renewal of Class I Covert Investigation.

Description of Operation:

The Wyoming Eagle Poisoning Investigation II, INV 9982AK, was initially approved on May 31, 1990, as a Class I Covert Investigation. The investigation has focused on individuals and groups who are engaged in or promoting the killing/poisoning of bald and golden eagles in Wyoming. The investigation involves U.S. Fish and Wildlife Service (Service) Special Agents (SA) and a Cooperating Private Individual (CPI) posing as coyote hunters in an attempt to verify intelligence information that was received.

Initial contacts in Wyoming confirmed that bald and golden eagles are being killed with a variety of poisons. The chemicals are being intentionally used in violation of the Federal Insecticide, Fungicide, and Rodenticide Act to kill predators of sheep herds. Many of the poisons, such as Compound 1080 and Thallium, have been banned for all use by the Environmental Protection Agency (EPA). Other chemicals such as Temik, Furadan, and Harbex may be used and/or distributed only for specific purposes and only by certified individuals. The illegal sale, distribution, and use of the poisons are either being performed, condoned, or promoted by supervisory and non-supervisory personnel of the U.S. Department of Agriculture's Animal Damage Control (USDA-ADC) Division, as well as State Predator Control Board employees and local sheep ranchers.

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This illegal use and distribution of the restricted chemicals are being done with specific intent to kill predators of sheep. Although coyotes are targeted, eagles also are being intentionally poisoned. Instructions are being given by State and Federal predator control personnel on how to illegally lace animals with poisons with the specific intent of killing eagles, as well as other predators. Instructions are being given on when and where to use the poison and what to do with eagle carcasses to avoid being caught.

SA Douglas McKenna, Salt Lake City, Utah, has been conducting a separate investigation into the poisoning of eagles along the Utah/Colorado border. Pursuant to a plea agreement, Gary Robbins, a sheepman from northeast Utah, provided information to SA McKenna about the poisoning of eagles. Robbins, who was prosecuted in Federal Court for poisoning three golden eagles, provided locations, methods, and names of individuals who were intentionally killing eagles in northeast Utah and northwest Colorado by illegal use of poisons. Robbins also provided information about a dump site which allegedly contains over 100 poisoned eagle carcasses.

On April 16, 1990, the Utah/Colorado Border Eagle Killing Investigation (INV 7372AK) was approved as a Class II Covert Investigation. In furtherance of this investigation, SA McKenna opened an undercover predator control business. Through his guise as a contract trapper, he gained the confidence of sheepmen in northeast Utah and northwest Colorado who have taken eagles by use of poison. He learned that individuals involved in the sheep industry routinely illegally take deer, antelope, and elk. They then inject the carcasses with toxic chemicals and then scatter these lethal "baits" throughout the private and public range lands commonly utilized by domestic sheep. Additionally, sheep that die from natural causes, and coyotes killed by earlier use of these lethal baits, are also injected with toxic chemicals and scattered over the grazing areas to aid in the control of all forms of mammalian/avian predators.

Those chemicals most commonly used are:

- A. Sodium Monofluoroacetate (Compound 1080) - smuggled into the U.S. from Canada and Mexico, and unlawfully used in predator control.
- B. Aldicarb (Temik) - an insecticide of extremely lethal qualities which is commonly misused in violation of State and Federal laws for predator control.
- C. Thallium Sulfate - a rodenticide that has been restricted from use in the U.S. for the last 20 years, and responsible for most eagle mortalities examined to date.

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In addition, SA McKenna has verified raw intelligence, gathered information on illegal sources of chemicals, methods, and timeframes of poisoning, names of potential defendants, and names of those who have already violated the Eagle Protection Act, Migratory Bird Treaty Act, and/or Federal Insecticide, Fungicide, and Rodenticide Act.

SA McKenna has confirmed the illegal use of poisons with the discovery of eight bald and four golden eagles. The eagles, which were killed with Thallium poisoning, were found near Vernal, Utah. They were found at a location where a deer carcass had been laced with Thallium poisoning. Five dead bear and two dead magpies were also found at another site near Meeker, Colorado. The dead bears and magpies were killed with Temik poisoning. A report has been received of a third site at which dead sheep and five dead eagles were seen. One eagle has been recovered and confirmed as being poisoned with Temik. The same woolgrower has been associated with both Temik poisoning sites. All of the poisoned animals and birds were found on sheep grazing leases. Covert contacts have resulted in the identification of the individual responsible for the distribution of the Thallium poison, and are expected to confirm the identify of the person responsible for the Temik poisonings.

SA McKenna has determined that many individuals who are identified as defendants or potential defendants in the Wyoming Eagle Poisoning Investigation II (INV 9982AK) are also subjects of the Utah/Colorado Border Eagle Killing Investigation (INV 7372AK). Covert contacts with these individuals have resulted in a significant overlap between these two investigations. Subjects in Wyoming who have been contacted by SA McKenna and the CPI have contacted subjects in Colorado to determine if SA McKenna "can be trusted". SA McKenna's "cover" has been verified by his Utah/Colorado contacts. As a result, he has gained the confidence of the Wyoming subjects in a significantly shorter time than would have been expected. Wyoming subjects are now providing SA McKenna with illegal poisons, showing him how to use the poisons to kill eagles without being caught, and providing detailed information about who has previously killed eagles.

SA McKenna has been asked by the sheepmen connected with previous eagle poisonings to continue with his trapping activities during the fall and winter of 1991-1992.

Recommended Plan:

Investigative activities have revealed that the Wyoming Eagle Poisoning Investigation (INV 9982AK) and the Utah/Colorado Eagle Killing Investigation (INV 7372AK) have several defendants in common. In addition, each investigation is authorized as an [REDACTED] where SA McKenna is utilizing basically [REDACTED]

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Upon approval of the Class I renewal, INV 9982AK and INV 7372AK will be combined under one investigation. The title "Wyoming Eagle Poisoning Investigation" will be retained under INV 9982AK. All investigative reports will be consolidated under INV 9982AK. The assets from the [REDACTED] for INV 7372AK will be transferred to INV 9982AK.

SA McKenna will continue to operate with the [REDACTED]

-7-E  
-7-D

They will continue to meet with as many Government trappers, chemical distributors, landowners, sheepherders, and their associates as possible during the upcoming trapping season. These contacts will continue to identify subjects who are involved with the direct and indirect illegal take of bald and golden eagles, other migratory birds, and resident big game species. Collaterally, they will obtain further evidence necessary to successfully prosecute those subjects identified as violating Federal and State laws.

At the conclusion of the 1990 (fall) - 1991 (spring) trapping season, a re-examination of the investigation will occur. This will determine if enough evidence has been collected and enough subjects identified for subsequent prosecution to have the desired impact of general cessation of these illegal activities by the animal husbandry industry in this arena.

If, in the considered opinion of the Service and the Department of Justice, the investigation needs to continue, then the investigative timeframe will be further extended through another trapping season into the spring of 1992.

## Laws Violated to Date:

Migratory Bird Treaty Act, Endangered Species Act, Eagle Protection Act, State laws, Federal Insecticide, Fungicide, and Rodenticide Act, and Airborne Hunting Act.

## Animals Identified or Suspected of Being Illegally Taken:

Bald eagles, golden eagles, deer, antelope, black bear, miscellaneous raptors, and magpies.

## Identification of Cooperating Private Individual (CPI):

DN-4033

# SENSITIVE

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Length of Time Needed for the Investigation:

It is expected that the covert phase of this investigation will continue through the next lambing (trapping) season, which extends into May 1991. Subjects of the investigation are very cautious and SA McKenna may require up to a year of confidence building before sufficient evidence is obtained to sustain Federal prosecutions. If deemed necessary by the Service and Department of Justice, the investigation may continue through the spring of 1992.

Illegal Take of Wildlife by Law Enforcement:

The States of Utah and Colorado have authorized the take of resident big game by Law Enforcement officials associated with this investigation. The policy of the U.S. Attorney for the District of Wyoming is that no defendants will be charged with any violations that result from an Agent illegally taking wildlife. The U.S. Attorney does recognize that situations exist and has authorized the illegal take of wildlife by an Agent or CPI to protect their cover or in furtherance of the investigation.

Authorization has been given to Service Agents by the Class I Covert Investigation Review Committee to kill up to five eagles in furtherance of this investigation. However, there will be no eagles taken by SA McKenna or the CPI unless it is absolutely necessary to protect their cover or in furtherance of this investigation. Every attempt will be made to utilize previously killed eagles. SA McKenna and the CPI may become knowledgeable of poison bait sites, which were placed by defendants, that may subsequently kill eagles.

Why a Covert Operation is Necessary:

1. Subjects of this investigation are very cognizant of the Federal and State laws being violated and understand fully that their actions may lead to prosecution and subsequent loss of grazing rights.
2. Subjects of this investigation are utilizing sophisticated and time-proven methods to violate Federal and State laws to "protect" their livelihood.
3. Subjects of this investigation, for the most part, are "close knit," historical families that are extremely difficult to penetrate in any manner except through covert activity.
4. The scope and degree of violations being committed are such that there is little or no conversation regarding these violations except among trusted confederates.

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## 5. The attempts at [REDACTED]

The Service has had numerous cases where they have dead eagles, poisoned baits, lab analysis on the poison identification, and a possible suspect, [REDACTED] the incident and [REDACTED]

The most recent example involves the highly publicized discovery of five bears and several magpies that were found near a sheep carcass that was laced with Temik. The site was near Meeker, Colorado. Another site was found approximately 15 miles southwest of where the poisoned bears were located. This site had a dead sheep, five dead eagles, and several dead coyotes. One of the eagles was recovered and confirmed to have been killed with Temik poison.

An overt investigation into the poisoning of the bears and eagles is being conducted by the Colorado Division of Wildlife, EPA, USDA-ADC, and the U.S. Forest Service. The U.S. Fish and Wildlife Service is providing support to the investigation, yet ensuring it does not jeopardize this covert investigation. [REDACTED]

[REDACTED] The subjects have continued to distribute illegal poisons to SA McKenna. They tell him when and how to disperse poisons to kill eagles and other predators, and they explain how to avoid being caught. Covert contacts have resulted in evidence that is expected to allow charges to be filed against the person who laced the sheep carcass and caused the deaths of the bears, eagles, and magpies at the three locations.

## 6. The legal requirements of proof, and additional requirements of the United States Attorney's Office, are such that to approach this investigation in any other manner will not lead to prosecutable cases which are essential to reduce and/or eliminate these activities on a major scale.

Why Operation Merits Class I Approval:

1. There exists a probability that endangered species (bald and golden eagles) may be taken by Service Agents or the CPI in furtherance of the investigation.
2. Violations of Federal law (Migratory Bird Treaty Act, Airborne Hunting Act, Eagle Protection Act, and Federal Insecticide, Fungicide, and Rodenticide Act) have been knowingly committed by Federal employees (USDA-ADC) and State Predator Control Board members.

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3. Defendants of this investigation have strong political ties. One defendant is a Republican Committee Chairman, former State Senator, and former President of the Colorado Woolgrowers Association. Another defendant is a former President of the Wyoming Woolgrowers Association.

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4.



5. Special funds for this investigation are expected to reach \$100,000. This amount will be necessary for the setup and support of the covert business including payment of the CPI's salary, travel and per diem expenses while SA McKenna is in a covert capacity, purchase of costly illegal chemicals, maintenance and operation of covert vehicles, payment for advertising, rent, and utilities for the business, and procurement of essential supplies/equipment necessary to operate the covert business.

Attorney Involvement:

U.S. Department of Justice Attorney Jim Kilbourne and John Webb of the Lands and Natural Resources Division, Washington, DC, have been fully briefed on the investigation. They will serve as the primary prosecutors for cases arising in Wyoming. They will also provide necessary legal advice and support.

United States Attorney Richard Stacey, District of Wyoming, Cheyenne, Wyoming, and his Assistants John Barksdale and Lisa Leschuck, have been briefed on this investigation and will provide legal assistance.

Assistant United States Attorneys David Conner and Joseph Mackey, District of Colorado, Denver, Colorado, have been briefed on the investigation. They have agreed to prosecute and provide legal support for cases developed in Colorado.

Assistant United States Attorney Mark Vincent, District of Utah, Salt Lake City, Utah, has been briefed on the investigation. He will prosecute and provide legal support for cases developed in Utah.

Outside Agency Involvement:

This investigation is being proposed solely by the Service. Formal Memorandums of Understanding (MOU) have been signed by the Directors of the Wyoming Game and Fish Department, Utah Division of Wildlife Resources, and Colorado Division of Wildlife. The MOU's authorize joint investigations, but do not specifically address this investigation.

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The Colorado Division of Wildlife has been fully briefed on activities occurring in Colorado and Utah as a result of INV 7372AK. Colorado is providing a covert investigator who will independently operate as a recreational trapper. None of the States, nor the Colorado covert investigator, are aware of the investigative activities in Wyoming. This is due to the politically sensitive nature of the investigation and the federally protected species involved.

Case Reports:

On file in Denver, Colorado, and Washington, DC, under:

INV 9982AK - Wyoming Eagle Poisoning Investigation II  
INV 7372AK - Utah/Colorado Border Eagle Killings  
INV 5383AJ - Gary Robbins

Case Synopsis:

Since 1984, the Service has documented that significant numbers of bald and golden eagles are being poisoned in Wyoming. Information received through a CPI indicates that ranchers, Predator Control Board members, State agriculture officials, and Federal Animal Damage Control personnel are involved in the poisoning and killing of eagles in Wyoming. This information has been confirmed through covert contacts by SA McKenna and through information provided by Gary Robbins. Gary Robbins is a sheepherder who was convicted in Federal Court in Utah for killing three golden eagles by poisoning. He provided SA McKenna with information on locations, methods, and individuals involved in the poisoning/killing of eagles. The information was provided pursuant to a Federal plea agreement.

The following is a synopsis of information received and/or documented through Agents' observations or in recorded tape conversations relating to specific individuals.

Randy Graham: Employed by the Wyoming State Department of Agriculture as a predator control consultant/coordinator.

- Claims to be known by John Turner.
- Knowledgeable of all Federal and State laws relating to the use and distribution of poisons. He trains Federal and State predator control personnel on use of poisons.
- He is a primary distributor of illegal poisons.
- He provides detailed instructions on how to illegally use poisons and obtain the best results in killing eagles and other predators without getting caught.

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- He is in illegal possession of 72 pounds of Compound 1080--he falsified EPA records indicating the poison had been destroyed.
- Graham unlawfully sold three 8-ounce cans to SA McKenna and the CPI for \$300 per can. He said he also sells illegal poisons to others. The proceeds go to his retirement fund.
- Graham has told SA McKenna of a black market in eagle parts in Wyoming and advocates parts from poisoned eagles be entered into this commercial market.
- He has provided instructions on how to buy illegal bobcats and change tags so they can be re-sold.
- He has advised SA McKenna and other woolgrowers to obtain certification as black-footed ferret surveyors so they can declare grazing land free of black-footed ferrets without having to do actual survey work.
- He has illegally distributed 150 Strychnine capsules to the CPI for drop baits.
- Graham gave complete descriptions of Wyoming-based Service Agents to SA McKenna so he could be on the alert for them while working predators.

Laird Johnson: District Supervisor, USDA-ADC, Wyoming

- Has admitted on tape that he illegally uses poisons to kill eagles and other predators.
- Illegally killed coyotes from aircraft in an area where he knew predator control activities were specifically prohibited.
- Recently fired one trapper (USDA-ADC) for same Airborne Hunting Act violation he (Johnson) committed.
- Involved in other Airborne Hunting Act violations.

Lyle Crosby: Assistant Chief for USDA-ADC in Wyoming

- Admitted on tape that it is safe to poison eagles on private property, but advised Agent to stay off of public lands as it is easier to get caught.

**SENSITIVE**

# SENSITIVE

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- Admitted on tape that illegal use of M-44's by Arnie DeBock, a Federal (USDA-ADC) trapper, was covered up by ADC and not reported to EPA as required.
- Condones the illegal use of poisons to kill eagles.
- Will not turn in violations involved with illegal take of eagles or black-footed ferrets.

Arnie DeBock: Federal (ADC) trapper, Wyoming

- Illegally uses M-44's and other poisons in violation of EPA regulations.
- Very knowledgeable of laws regulating poison use.
- Knows of poisoned eagles; puts them into gopher holes.

Jerry Dilts: Sheep rancher, Gillette, Wyoming, and President of Predator Control Board for Campbell County, Wyoming

- Uses his own helicopter for Airborne Hunting Act violations.
- Known to have killed many eagles.
- Illegally uses Compound 1080 poison as drop bait from helicopter.
- Has requested CPI do predator control on his ranch.

James Bigelow: Director of Technical Services, Wyoming Department of Agriculture

- The CPI failed portions of the commercial application examination. Bigelow sent the CPI a copy of the test and told him to just fill in the answers. This is contrary to normal testing procedures, but assured the CPI could continue with the Compound 1080 collar test program.

[REDACTED] Outfitter, sheep rancher, Wyoming

- Takes adult eagles by poison.
- Kills young eagles while in the nest and destroys the nest.

Brad Palm: Rancher in Wyoming

- Told CPI he plans to poison eagles on his ranch by using Warbex. He stuffs any dead eagles he finds into badger holes.

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**Dick Strom:** Sheep rancher; past President of Wyoming Woolgrowers Association; serves on University of Wyoming Agriculture Advisory Board; is private predator control contractor; and serves on County Predator Control Board

- Major distributor and user of illegal poisons for predator control.
- Poisons eagles by using Methomyl and Temik.
- Illegally sold CPI Compound 1080, Methomyl, Thallium, Temik, Strychnine, and Cyanide.
- Instructed CPI on illegal use of poisons in carcasses.
- Introduced CPI and SA McKenna to numerous woolgrowers who are allegedly poisoning eagles.
- Suggested Agents sell poisoned eagles in South Dakota to defer operational costs of predator control business.
- He continually reminds SA McKenna of the three S's: shoot, shovel, shut up.
- Has provided guidance to SA McKenna on how to set up illegal predator control business including use of poisons to kill eagles and dispose of poisoned eagles.
- Strom admitted to killing nine eagles in one year.

**Nick Theos:** Republican Party Committee Chairman for northwest Colorado; former State Senator; former President of Colorado Woolgrowers Association; and member of Rio Grande County, Colorado, Predator Control Board

- Gives sheepherders Thallium poison to use for predator control.
- May have large supply of Thallium buried.
- Told SA McKenna how to use poison and when to obtain best results to control birds (eagles) on grazing leases.
- Primary illegal distributor of poison for predator control.
- Five golden and eight bald eagles were found poisoned on his grazing lease.
- Has knowledge of who put out poison that killed the five bears and eagles near Meeker, Colorado.
- Former employee of Theos is informant of the Service and has told how Theos illegally poisons eagles and other predators.

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[REDACTED] Woolgrower, Colorado/Utah

- Primary suspect in bear poisoning near Meeker, Colorado, and of the site 15 miles southwest of Meeker where a sheep, five eagles, and several coyotes were found dead. Temik is confirmed as the poison being used at both locations where Peroulis manages the sheepherds.
- Illegally sold Temik to Gary Robbins for predator control.

[REDACTED] Woolgrower, Colorado/Utah

(b)(7)(c)

- Claimed to have killed two eagles by poison in 1989.
- Asked SA McKenna to trap on or near U.S. National Park Service lands (Dinosaur National Monument).
- Halandrus' herders instructed SA McKenna on how to use poisons for predator control.

[REDACTED] Woolgrower, Colorado/Utah

(b)(7)(c)

- Killed a bald eagle by use of poison on his public grazing lease.

Roy Hall: Manufacturer of Coyote Getters, Pueblo, Colorado

- Illegally sold Cyanide capsules to the CPI.
- Has been previously prosecuted by EPA for Federal Insecticide, Fungicide, and Rodenticide Act violations.
- Instructed CPI on how to conceal illegal Cyanide poison on his person should he be contacted by a game warden or police officer.

Date Approval Needed:

The current authorization for a Class I Covert Investigation expires on November 30, 1990. It is critical that there not be a lapse in authorization dates, as significant covert activities are planned to take place in early December 1990.

Takedown of Operation:

The date of the takedown of these combined investigations is unknown at this time. Depending on the progress of the investigation, takedown could be as early as June of 1991. Unless further covert investigation is warranted, then the takedown could be as late as the spring of 1992.

SENSITIVE

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**SENSITIVE**

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Approval for renewal of Class I Covert Investigation - Wyoming Eagle  
Poisoning Investigation II - INV 9982AK, ~~see~~

**Approve Renewal:**

Robert Butterbaugh  
Regional Director

11-14-90  
Date

**Approve Renewal:**

Chief, Law Enforcement

Date \_\_\_\_\_

**Approve Renewal:**

*Rallin D. Spawor*  
Assistant Director, FWS

11/26/90  
Date

**Approve Renewal:**

Director

Date \_\_\_\_\_

Disapprove Renewal:

Director

Date \_\_\_\_\_

**Why disapproved? Comments.**

**مجلس**

93

DEPARTMENT OF THE INTERIOR  
U.S. FISH AND WILDLIFE SERVICE  
DIVISION OF LAW ENFORCEMENT

REPORT OF INVESTIGATION

TITLE  WYOMING EAGLE POISONING INVESTIGATION II MCBRIDE, Roy R-83	DATE OF REPORT  6/17/91	FILE NO.  INV 9982AK
	INVESTIGATIVE PERIOD  5/6/91 to 5/9/91	
	REPORTING REGION  DN-6	REGION OF ORIGIN  DN-6
ACT CODE/VIOLATION TYPE  ESA, EPA, MBTA, FIFRA	REPORT MADE BY  SA McKenna	APPROVED BY  <i>[Signature]</i>
REFERENCES  R-82	STATUS  P	INVESTIGATIVE HOURS  25 hrs.

~~SYNOPSIS~~ SYNOPSIS

SYNOPSIS

Roy MCBRIDE contacted T-1 by telephone. MCBRIDE was interested in how much money T-1 could get for a can of 1080. T-1 said that he could get \$600 for an 8 ounce can of 1080 in [REDACTED]. He wanted to know if T-1 could sell about 50 cans of 1080. The cost of 50 cans of 1080 would be \$30,000. MCBRIDE told T-1 that it would have to be a cash only deal.

MCBRIDE would have the person who wanted to sell the 1080 contact T-1. MCBRIDE would stay out of the poison deal because he had too much to lose if they got caught. Last year, MCBRIDE purchased two cans of 1080 illegally. He knew of a rancher in Texas that poisons carcasses and kills eagles/buzzards.

MCBRIDE asked T-1 questions about T-1 using the large collars filled with Furadan. He wanted to know how the collars worked and if they killed any coyotes.

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- ☒ ~~XXXX~~ SA's McKenna & Prieksat (1) each.
- ☒ SA's Klett, Kraft, Branzell. (1) each.
- ☒ USA's Webb, Linsin, & Korzenik (1) each.

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**SENSITIVE**

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NARRATIVE

DETAILS OF INVESTIGATION:

5-6-91 CONTACT WITH MCBRIDE BY TELEPHONE:

On 5-6-91, MCBRIDE contacted T-1 by telephone. The phone call was tape recorded (RS-09-24AB). MCBRIDE asked if T-1 had put out the large 1080 collars in Wyoming. MCBRIDE asked what T-1's plan was with the collars. T-1 stated that he had used the collars in a 200 acre pasture. He used all of the 50 large collars that MCBRIDE had sent him. MCBRIDE asked if T-1 had any problems with loading the large collars with poison. MCBRIDE asked if T-1 had shook up the poison "real good" before he loaded the collars. MCBRIDE told T-1 to be careful using the poison.

MCBRIDE asked who was looking after the collared lambs. T-1 stated that only the sheep owner and himself knew about using the large collars. MCBRIDE said that the Furadan will work well. MCBRIDE said that a rancher had killed three coyotes by using his legal 1080 collars.

MCBRIDE asked how big the lambs were. T-1 said that the lambs were about 95 lbs. MCBRIDE thought that the lambs were real big. He said that if he had sent the collars sooner, the lambs would have been a lot smaller. MCBRIDE said that the ranchers in Wyoming are used to getting everything for free.

MCBRIDE said that Furadan in the collars will kill coyotes. He said that Methomyl will also work. He stated that the collar is a delivery system.

MCBRIDE asked how the coyote getters were working at the [REDACTED] Ranch. T-1 said that he had a few [REDACTED] (Author note: T-1 was talking about coyotes pulling on the coyote getter mechanism which kills the coyote.) (b)(7)(c)

MCBRIDE asked T-1, "how many people in Wyoming use 1080" for predator control work. MCBRIDE asked how much the 1080 costs in Wyoming. T-1 said that it cost about \$600 for a can of 1080. MCBRIDE said that the legal 1080 is cheaper than that. He said that he had heard stories of 1080 going for a \$1,000 a can or \$800 a can. T-1 said that he could move 1080 in Wyoming for ever. MCBRIDE asked T-1 what he can get for 1080. T-1 responded he could get \$600 for a can. T-1 said that he could sell 1080 in Wyoming if he could get a source to buy it. MCBRIDE was interested in how much 1080 T-1 could sell in Wyoming. He wanted to know if T-1 could sell 50 cans. MCBRIDE said that he knew a guy that had some 1080. He thought that 50 cans of 1080 would supply Wyoming for the next 50 years. MCBRIDE said that he was afraid to take the risk, because he had too much to lose. MCBRIDE thought that T-1 should sell

1080 drop baits. MCBRIDE had the molds to make the drop baits. He told T-1 to sell the 1080 cans to the predator boards and the drop baits to the ranchers. He told T-1 to be careful because he might "not last long."

MCBRIDE said that he knew Andy ALLEN. He said that ALLEN ~~was a convicted felon and~~ wondered how he got re-hired by ADC. He thought that there were restrictions on that. He thought that Lyle CROSBY knew about the alternative methods of predator control.

MCBRIDE asked T-1 how long he thought he would take to unload a lot of 1080. T-1 said that he could get rid of it in a week. T-1 said that he has made and sold drop baits before. MCBRIDE asked if T-1 got 50 cans of 1080 if he could get \$30,000 to purchase the 1080. T-1 responded "yes." MCBRIDE said that he would "talk to some folks." It would be a cash deal only.

MCBRIDE asked how the large 1080 collars were working. He thought that it should work in killing the problem coyote in the area.

MCBRIDE told T-1 to be careful. He said to only sell the 1080 to one person and let that person worry about distributing it. It is technical 1080. MCBRIDE said that he has seen that 1080. He purchased two cans of it last year. He uses it in Mexico. He said that he would talk to "the guys."

MCBRIDE said that he does not market or sell 1080. He does know people who do deal in 1080. He said that if T-1 got caught, they would use him as an example. It is worse than selling drugs if you got caught. MCBRIDE said that T-1 should have to know who he was selling the 1080 to. MCBRIDE said that he would call T-1 later.

5-9-91 CONTACT WITH MCBRIDE BY TELEPHONE:

On 5-9-91, MCBRIDE contacted T-1 by telephone. The telephone conversation was tape recorded (RS-9-25A). T-1 told MCBRIDE that he had killed two coyotes with the Furadan collars sent by MCBRIDE. MCBRIDE said that Furadan smells like diesel fuel. T-1 described what the punctured collars looked like from the two coyote kills. MCBRIDE said that if the collars had 1080 in them, he would not have found the dead coyotes.

MCBRIDE told T-1 to be careful and not get MCBRIDE or GRAHAM in trouble. MCBRIDE said not to sell the Furadan or put it in meat. It smells too bad to put it in meat. He said to put 1080 in meat because it is tasteless and odorless. MCBRIDE told T-1 to be careful so he is not setup in a sting. MCBRIDE said that he really did not want to get involved in selling 1080. He would have the person wanting to sell 1080 contact T-1. He wanted to stay out of the "deal."

INV 9982AK  
DATE 6/17/91

MCBRIDE told T-1 to get a hold of gold mines to get cyanide for coyote getters. MCBRIDE said that he knew Ray HALL could get cyanide because he exports the coyote getters.

MCBRIDE said that he sees the guy in Texas who has 1080 for sale, he would give T-1's name and phone number to the guy. It was up to them to make the deal. MCBRIDE knows ranchers in Texas who use poison on carcasses, and kill buzzards and eagles.

SUBJECT:

Roy MCBRIDE  
[REDACTED] TX

LAWS VIOLATED:

None

~~MCBRIDE~~  
unclassified

EVIDENCE:

1. Taped conversation between T-1 and MCBRIDE (RS-09-24AB).  
Dated on 5/6/91.
2. Taped conversation between T-1 and MCBRIDE. (RS-09-25A).  
Dated on 5/9/91.

ATTACHMENTS:

None

WITNESSES:

SA Douglas MCKENNA  
U.S. Fish and Wildlife Service  
P.O. Box 27048  
Salt Lake City, UT 84127

[REDACTED] (X)(7)(c)  
T-1

DEPARTMENT OF THE INTERIOR  
U.S. FISH AND WILDLIFE SERVICE  
DIVISION OF LAW ENFORCEMENT

REPORT OF INVESTIGATION

TITLE  WYOMING EAGLE POISONING INVESTIGATION II MCBRIDE, Roy R-65	DATE OF REPORT  2/22/91	FILE NO.  INV 9982AK
	INVESTIGATIVE PERIOD  12/12/90 to 2/19/91	
	REPORTING REGION  DN-6	REGION OF ORIGIN  DN-6
ACT CODE/VIOLATION TYPE  ESA, EPA, MBTA, FIFRA	REPORT MADE BY  SA MCKENNA	APPROVED BY  <i>[Signature]</i>
REFERENCES  R - 64	STATUS  Pending	INVESTIGATIVE HOURS  120 hrs.

XXXXXXXXXXXXXXXXXXXX

SYNOPSIS:

T-1 contacted Roy MCBRIDE by telephone. T-1 inquired about the purchase of the large 1080 collars for predator control work. MCBRIDE stated that it was illegal to sell or use the large 1080 collars in Wyoming. He stated that he would sell the large collars to T-1. MCBRIDE had to get some extra 1080 to load in the collars. He told T-1 that he had Furadan which works even better than 1080 in the large collars.

MCBRIDE said he had sold large 1080 collars and they were in use in Wyoming at the present time. He had worked with Randy GRAHAM and Merv GRISWALD in setting up the sale and use of the large 1080 collars in Wyoming. ~~MCBRIDE~~ *under the*

MCBRIDE had problems with obtaining additional 1080 to load the large 1080 collars for T-1. He was working in Florida and could not get any member of his family or employee to load the large collars with 1080 or Furadan. They did not want to be involved because it was illegal. MCBRIDE stated that he would try to get the large collars loaded and sent to T-1 in April.

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SENSITIVE

INV 9982AX  
Date 2/22/91

NARRATIVE

DETAILS OF INVESTIGATION:

12/12/90 Contact with Roy MCBRIDE by Telephone:

On 12/12/90, T-1 contacted Roy MCBRIDE by telephone at [REDACTED]. The telephone conversation was taped (RS-9-05A). MCBRIDE stated that he was to leave Texas after January 4 for a long time maybe until May. T-1 asked when SA MCKENNA and T-1 could visit MCBRIDE in Alpine, TX. MCBRIDE and T-1 talked about airline fares. MCBRIDE said that he was to work in Florida on January 7. (Author's note: MCBRIDE was to live trap cougars for the Florida Fish and Game.) T-1 and MCBRIDE made tentative travel plans for T-1 and SA MCKENNA to visit with MCBRIDE during the first of January. (b) (7) (c)

MCBRIDE stated that he had just come back from Asia, Russia, and Mongolia. He worked on different projects there. He just received photographs of foxes his 1080 collars had killed in Argentina. He stated that in Mongolia they kill snow leopards with dogs, but he worked on a different project. He said that the snow leopard deal was something else. MCBRIDE has lined up other East Block Countries to use his 1080 collar next year.

MCBRIDE and T-1 talked about the private predator control business in Wyoming.

T-1 advised MCBRIDE that Ray HALL'S deal was good. MCBRIDE thought that HALL had a good thing going. He was glad to hear that HALL'S equipment was good. (Author's note: T-1 had previously purchased coyote getters and cyanide shells from HALL.)

MCBRIDE told T-1 that using toxics was trouble. Most people that use the toxics, use too much. MCBRIDE stated that he knew of the five bears killed by poison in Colorado and the rancher that killed eagles by poison in New Mexico. They were going to hang them out to dry.

T-1 told MCBRIDE about the sheep killed at Ron HEWARD'S ranch. MCBRIDE thought that the sheep kills were from a cougar or a poisoned weed.

SENSITIVE

INV

9982AK

Date

2/22/91

1/1/91 Contact with MCBRIDE by Telephone:

On 1/1/91, T-1 contacted MCBRIDE by telephone at ( ) [REDACTED]. The telephone conversation was taped (RS-9-06A). T-1 stated that he was so busy in the predator control business that T-1 and SA MCKENNA would wait until Spring to visit MCBRIDE. MCBRIDE asked T-1 about what he wanted to do with the traps that MCBRIDE had made. T-1 asked him to wait until he talked to SA MCKENNA. (S)(7)(C)

T-1 talked to MCBRIDE about the sheep kill at HEWARD'S and trapping coyotes at that ranch. MCBRIDE said that 1080 would work well there. He knew someone that had some 1080. He told T-1 to keep him posted on what happens. MCBRIDE could get T-1 some 1080, but had to be real careful. He said that when T-1 got down to Texas that T-1 could get 1080.

MCBRIDE said that he had talked with [REDACTED] the other day about them using 1080 collars this past summer. MCBRIDE talked about using the 1080 collars in Argentina. They mixed the large 1080 collars with the small collars on various sheep and it worked real well. MCBRIDE thought that Randy GRAHAM was using the 1080 collars up in GRISWALD'S area in Wyoming. (S)(7)(C)

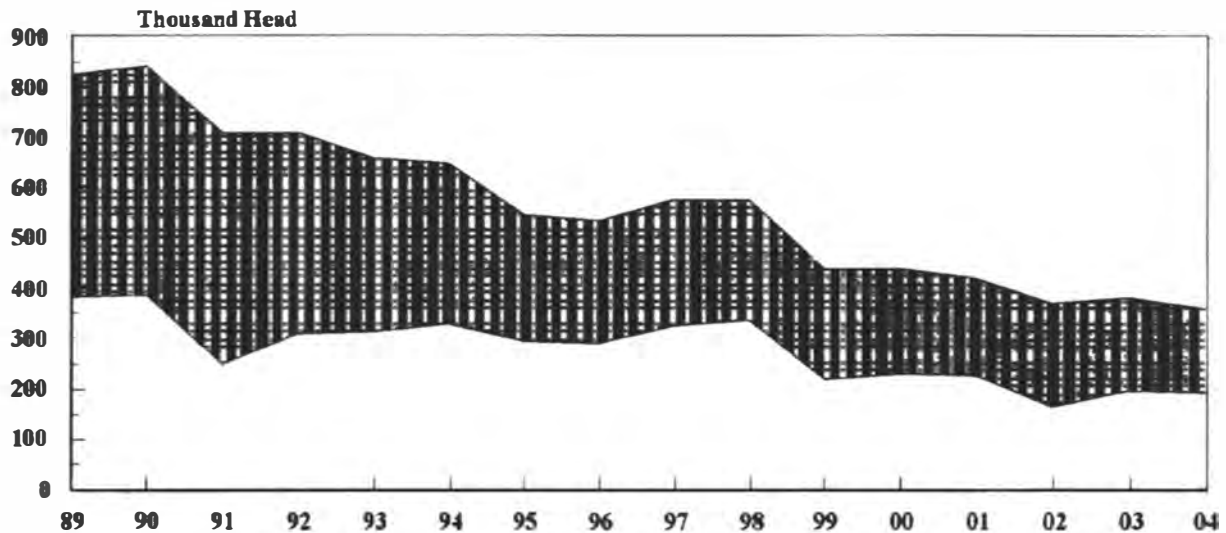
MCBRIDE said that Animal Damage Control in Texas had bought a whole bunch of 1080 collars from him. He was so busy that he could use some help. He wanted T-1 to stay in touch.

T-1 asked MCBRIDE about acquiring the 1080 in Texas. MCBRIDE asked T-1 how much T-1 needed. He said that people use 1080 a lot in Texas. He wondered why so many people get caught in Wyoming. MCBRIDE thought maybe it was because the poisoning occurred on public lands. He said that maybe they (the authorities) did not want to catch anyone in Texas. He said that 8 ounces of 1080 would last you a long time unless you were selling it. He said to use 1080 sparingly and you would not get caught. MCBRIDE said that a lot of people are selling different poisons and are getting rich from it.

SENSITIVE



## Sheep and Lamb Inventory Colorado, January 1, 1989-2004



Breeding Sheep & Lambs
  Market Sheep & Lambs

**Sheep and Lambs: Total inventory and value and inventory by class, Colorado, January 1, 1984-2004**

Year	Total	Inventory Value		Inventory by class				
	All sheep and lambs	Per Head	Total Value	Market sheep and lambs	Breeding sheep and lambs			
					Total	Replacement lambs	Ewes 1 year old & older	Rams 1 year old & older
	1,000 Head	Dollars	\$ 1,000	1,000 Head	1,000 Head	1,000 Head	1,000 Head	1,000 Head
1984 .....	690	49.50	34,155	260	430	70	350	10
1985 ...	675	59.50	40,163	300	375	55	310	10
1986 .....	600	69.50	41,700	240	360	55	295	10
1987 ...	690	77.50	53,475	310	380	70	300	10
1988 ...	755	99.50	75,123	360	395	64	320	11
1989 ...	825	90.00	74,250	380	445	77	355	13
1990 ...	840	84.00	70,560	385	455	67	375	13
1991 ...	710	80.00	56,800	250	460	84	363	13
1992 .....	710	66.00	46,860	310	400	68	320	12
1993 .....	660	72.00	47,520	315	345	56	280	9
1994 ...	647	77.00	49,819	327	320	41	270	9
1995 .....	545	74.00	40,330	295	250	33	210	7
1996 .....	535	88.00	47,080	290	245	28	210	7
1997 ...	575	105 00	60,375	325	250	33	210	7
1998 ...	575	105 00	60,375	335	240	33	200	7
1999 ...	440	93.00	40,920	220	220	29	185	6
2000 ...	440	89.00	39,160	230	210	29	175	6
2001 .....	420	101 00	42,420	225	195	24	165	6
2002 ...	370	85.00	31,450	165	205	29	170	6
2003 .....	380	95.00	36,100	195	185	24	155	6
2004 ...	360	116 00	41,760	190	170	26	139	5

# **FREEDOM OF INFORMATION ACT REQUEST**

## **HQ-RIN-01570-07**

**REQUESTER:** Daniel Stotter

**Request Date:** June 22, 2007

**COMPANY:** Irving & Stotter LLP

**Received Date:** June 29, 2007

**FEE Category:** Commercial

**Subject:** copy of records regarding cyanide poisonings of humans from M-44 predator control devices, from 1980 to present

**Due Date:** July 30, 2007

**ASSIGNMENTS:**  
OPPTS

### **SPECIAL INSTRUCTIONS:**

**Fee Waiver Requested.**

**By July 5 please contact Mary Katherine Powers via e-mail at [hq.foia@epa.gov](mailto:hq.foia@epa.gov) regarding if it seems this request will exceed \$14.00, or not.**

FS: MKP

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# IRVING & STOTTER LLP

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0875

National Freedom of Information Office  
U.S. EPA, Records, FOIA and Privacy Branch  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

June 22, 2007

HPND1570-07  
Due: 7/30/07

Re: FOIA Request of Predator Defense

Dear EPA FOIA Officer:

I am writing on behalf of our client, Predator Defense, a non-profit wildlife advocacy organization, and pursuant to the Freedom of Information Act (FOIA), hereby request copies of the following records and documents:

All documents and records discussing or describing any cyanide poisonings of humans from M-44 predator control devices, including any and all investigations or follow-up reports concerning this incidents, from 1980 to the present.

Our client, Predator Defense, requests a fee waiver for this FOIA request pursuant to 5 USC 552(a)(4)(A)(iii). Predator Defense is a nationally recognized wildlife advocacy organization, and seeks the documents sought by this FOIA request in order to facilitate its ongoing research and wildlife conservation policy advocacy on the adverse impacts of M-44 cyanide predator control devices to native predators on public lands, to non-target wildlife species, as well as the non-target impacts of M-44s to human safety and human pets. Predator Defense is non-profit organization, and the records sought by this FOIA request will not be used for any commercial or "for-profit" purposes.

Predator Defense and its Staff and Advisory Board have a demonstrated ability to understand and synthesize the information sought by this FOIA request concerning the impacts of M-44 control devices. Predator Defense's staff and advisory board includes PhD level toxicologists, including Dr. Richard Hopkins, a nationally recognized expert on predator ecology and wildlife science. In addition, Predator Defense's director, Brooks Fahy has over 30 years of experience in investigating M-44 poisoning incidents, and other toxic agent impacts, and the organization's advisory board includes highly regarded toxicology experts who can also assist in reviewing the materials requested in order to evaluate the impacts of M-44 control devices to wildlife and human safety.



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Predator Defense also has nationally acclaimed and published nature / wildlife writers on its staff, who are trained to review the types of records requested, and to digest and disseminate this information to the general public. Predator Defense has considerable experience and expertise for using and distributing the information requested in this FOIA, and to disseminate this information in forms that will be of significant benefit to informing and educating the public. Predator Defense will use the information from this FOIA to inform and educate federal, state and local policy decision-makers through its wildlife advocacy and on its web site, which is highly regarded by many national, regional and local conservation organizations.

Predator Defense will also use the information obtained from this request in its wildlife advocacy newsletter and action alerts sent to its nation-wide membership. In addition, Predator Defense staff will use the information requested for ongoing lobbying on this issue to elected officials and agency staff who are making important policy decisions regarding the use of M-44s on public lands. Predator Defense staff have testified before elected officials on the use of these devices and their impacts to wildlife and public safety, and have also issued a number of special reports on M-44 and other predator control device impacts to wildlife and human safety.


Predator Defense will also use the information requested in its ongoing participation in national wildlife conferences and panel presentations, and also plans to use this information to educate the public on this issue in its nationally distributed news releases, and in press conferences and in media contacts requesting our client's perspective and expertise on wildlife issues and predator control device impacts.

Please send these records to:

Daniel J. Stotter  
Irving & Stotter LLP  
541 Willamette Ste. 307E  
Eugene, OR 97401

Please feel free to call our office at (541) 345-3800 if you have any questions regarding this matter. Thank you in advance for your assistance.

Sincerely,

  
Daniel J. Stotter  
Attorney at Law

cc: Client